

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

VANDERBILT MORTGAGE)	CASE NO: CA-C-09-312
AND FINANCE, INC., ET AL.,)	
)	CIVIL
Plaintiffs,)	
)	Corpus Christi, Texas
vs.)	
)	Wednesday, November 10, 2010
)	(8:17 a.m. to 8:31 a.m.)
CESAR FLORES, ET AL.,)	(11:19 a.m. to 12:32 p.m.)
)	(1:38 p.m. to 2:36 p.m.)
<u>Defendants.</u>)	(2:41 p.m. to 5:35 p.m.)

JURY TRIAL - DAY 1

BEFORE THE HONORABLE JANIS GRAHAM JACK,
UNITED STATES DISTRICT JUDGE

(JURY SELECTION UNDER SEPARATE COVER)

Appearances:	See Next Page
Court Recorder:	Velma Gano; FTR
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1 Corpus Christi, Texas; Wednesday, November 10, 2010; 8:17 a.m.

2 (Call to Order)

3 (Outside the presence of the jury)

4 THE COURT: Call the case, please.

5 THE CLERK: Yes, your Honor.

6 Court calls Civil Action C-09-312, *Vanderbilt*
7 *Mortgage and Finance, Inc., et al. versus Flores, et al.*

8 May I have appearances, please?

9 MR. B. GUTIERREZ: Baldemar Gutierrez, your Honor,
10 for Cesar Flores and Alvin King.

11 MR. RUMLEY: Your Honor, David Rumley on behalf of
12 Arturo and Maria Trevino.

13 MR. LOCHRIDGE: Your Honor, Pat Lochridge on behalf
14 of Vanderbilt Mortgage Finance, Clayton Homes, Inc., and CMH.

15 THE COURT: Okay. Anything to take up before we
16 bring the jury in?

17 (Pause; voices and whispers off the record)

18 MR. LOCHRIDGE: I do have one question, your Honor --

19 THE COURT: Yes, sir.

20 MR. LOCHRIDGE: -- insofar as the strike process.

21 THE COURT: Yes.

22 MR. LOCHRIDGE: After -- is it the Court's practice
23 after we've done -- both sides have done their voir dire to
24 then bring individuals up at the close of voir dire for cause,
25 discussions with the Court, or do we do those as we think we

1 may have one?

2 **THE COURT:** We do those as we think we need them.

3 **MR. LOCHRIDGE:** But as we go, or at the end?

4 **THE COURT:** Well, I assume that you won't -- you mean
5 you want to bring them up individually?

6 **MR. LOCHRIDGE:** Yeah; if the Court wants us to bring
7 them up individually, do we just make a note and say --

8 **THE COURT:** Unless there's something you want to say
9 outside the presence of the other panel, it should be done as
10 you're going along.

11 **MR. LOCHRIDGE:** All right.

12 **THE COURT:** And then you can come up and make your
13 motions to strike.

14 **MR. LOCHRIDGE:** At the close of all the voir dire.

15 **THE COURT:** For cause. Yes, at the close of
16 everything.

17 **MR. LOCHRIDGE:** At the close of everything.

18 **THE COURT:** Yes.

19 **MR. LOCHRIDGE:** Okay.

20 **MR. RANGEL:** Your Honor, there was an issue regarding
21 some exhibits that have been admitted and -- but Ms. Rodriguez
22 was going to raise that with the Court.

23 **MS. RODRIGUEZ:** Your Honor --

24 **THE COURT:** For admitted exhibits?

25 **MR. RANGEL:** Well, she will explain.

1 **MS. RODRIGUEZ:** Your Honor, there are some
2 housekeeping issues. Would the Court like to take those up now
3 or after voir dire?

4 **THE COURT:** Now.

5 **MS. RODRIGUEZ:** Okay. Your Honor, you may recall at
6 the pretrial conference the Court, I believe, admitted the
7 attachments to the Clayton parties' expert reports, which were
8 Exhibits 95, 96, 97. We have since broken them out on the
9 exhibit list for the convenience of the Court and the jurors
10 and now need to move for those -- for admission of those
11 exhibits itemized individually. And those would be, your
12 Honor, Exhibits 244 through 286.

13 **THE COURT:** And plaintiffs? Defendant? Sorry.

14 **MR. B. GUTIERREZ:** Mr. Rumley will address the Court
15 on that.

16 **THE COURT:** I thought I admitted them all together.

17 **MS. RODRIGUEZ:** You did, your Honor. We have simply
18 broken them out with individual exhibit numbers.

19 **THE COURT:** They're already admitted, so let's just
20 move on.

21 Next?

22 **MS. RODRIGUEZ:** And, your Honor, one other bundle,
23 Exhibits 242, 243. They were added after a late-taken
24 deposition. We'd like to move those into evidence. There is
25 no objection.

1 **MR. RUMLEY:** No objection.

2 **THE COURT:** Plaintiffs' two --

3 **MS. RODRIGUEZ:** Forty-two and --

4 **THE COURT:** -- forty-two?

5 **MS. RODRIGUEZ:** -- and 243.

6 **THE COURT:** And forty-three.

7 **MS. RODRIGUEZ:** As well as 244 through 286, your
8 Honor.

9 **THE COURT:** I'm sorry; 242, 243.

10 **MS. RODRIGUEZ:** And then -- and then, your Honor --

11 **THE COURT:** Admitted.

12 **(Plaintiffs' Exhibits Numbers 242 and 243 were received in**
13 **evidence)**

14 **MS. RODRIGUEZ:** And then 244 through 286, your Honor.

15 **THE COURT:** Any objection?

16 **MR. RUMLEY:** Your Honor, we had previously objected
17 to Exhibit 285, which is the Bryan Stone report, Texas
18 Department of Housing and Community Affairs document. And that
19 would be 285 and 286.

20 **THE COURT:** Okay.

21 **MR. RUMLEY:** So, we would object to --

22 **THE COURT:** Two eighty-five and 286?

23 **MR. RUMLEY:** We object to both of those exhibits.

24 **THE COURT:** So, 244 through 284 are admitted. Is
25 that all right?

1 **MR. RUMLEY:** Yes, your Honor.

2 **THE COURT:** Okay.

3 **(Plaintiffs' Exhibits Numbers 244 through 284 were**
4 **received in evidence)**

5 **THE COURT:** Anything else?

6 **MS. RODRIGUEZ:** No; just that, for the record, 285
7 and 286 we had agreed to admit them as the attachments to the
8 report.

9 **THE COURT:** Well, they're not agreed now, so they're
10 not admitted.

11 **MS. RODRIGUEZ:** I will then hand everything else
12 other than those two to Ms. Scotch.

13 **THE COURT:** Okay.

14 **MS. RODRIGUEZ:** Thank you, your Honor.

15 **THE COURT:** And, then, you all had some problems with
16 depositions? I've struck all your concerns about the
17 depositions. I refer you back to my original order that says
18 depositions may be read or shown in case -- in case of video to
19 the jury, but not admitted as separate exhibits. All
20 objections made during the depositions are heard at final
21 pretrial conference, which you all were not prepared to do.
22 All depositions must be reviewed by the parties prior to the
23 final pretrial conference so that unnecessary deposition
24 testimony is excluded. Parties must tender the parts of
25 depositions to be used at trial to opposing parties before the

1 final pretrial conference. Now, that is set in stone, not
2 done, so whatever you don't agree on is not coming in.

3 **MR. RUMLEY:** Your Honor, we have an issue with
4 Exhibit 266, which is the criminal records on Arturo Trevino.
5 We've previously objected to them and --

6 **THE COURT:** Okay. You know what? We'll just take
7 off --

8 **MR. UNIDENTIFIED:** Two sixty-six --

9 **THE COURT:** -- 244 through 284, since apparently
10 those were not agreed to, and I'm not going to go through them
11 each --

12 **MS. RODRIGUEZ:** I think --

13 **THE COURT:** -- one by one.

14 **(Plaintiffs' Exhibits Numbers 244 through 284 were**
15 **withdrawn from evidence)**

16 **MS. RODRIGUEZ:** I think if we can --

17 **THE COURT:** So, move on to the next issue.

18 **MS. RODRIGUEZ:** That's it from the exhibits, your
19 Honor.

20 **THE COURT:** Okay. Thank you.

21 Anything else?

22 **(No audible response)**

23 **THE COURT:** Okay. During -- I don't know if you all
24 had anybody downstairs during the qualification, but
25 Juror 27 -- do you have your seating charts? It doesn't

1 matter. Juror 27 threw her back out a couple of days ago, is
2 waiting to see her doctor and physical therapist, says she's
3 miserable and cannot sit. She did not sit during
4 qualification.

5 Any objection to striking her?

6 **MR. LOCHRIDGE:** No.

7 **MR. RUMLEY:** No objection.

8 **MR. LOCHRIDGE:** No objection here, your Honor.

9 **THE COURT:** Okay. It's unanimous. Twenty-seven is
10 gone.

11 A12 is a state game warden. He also has a sick
12 three-year-old and a one -- this doesn't make any sense. And a
13 one-year at the house? He's requesting an excuse as he's a
14 primary caregiver? I mean, what -- could you e-mail Ms. Chavez
15 and see if he's the primary caregiver or who's taking care of
16 the children?

17 Same with A23.

18 A32 is going through what he describes as a messy
19 divorce, said his wife is abusive, and that he left home a few
20 days ago and is living out of his truck.

21 **MR. RUMLEY:** No objection from us.

22 **MR. LOCHRIDGE:** No objection.

23 **THE COURT:** You don't want the truck man here? Okay.
24 A23 -- I'm sorry -- A32 is struck by agreement, and we'll put
25 him back on the next month's jury docket.

1 Al says she has a bladder problem, has to go to the
2 bathroom often, does not have a doctor's excuse, says it's due
3 to age. I usually just tell people to raise their hands and
4 we'll take another break. But you can make a note that Al has
5 this problem, unless you want to strike her by agreement.

6 **MR. LOCHRIDGE:** I'll just join her when she raises
7 her hand.

8 **THE COURT:** Pardon?

9 **MR. LOCHRIDGE:** That will help.

10 **THE COURT:** You can go, yes; but separately.

11 **(Laughter)**

12 Anything else?

13 **MR. B. GUTIERREZ:** Yes, your Honor. One concern,
14 your Honor, and that concerns the deposition of Benjamin Joseph
15 Frazier, your Honor. He is unavailable. We --

16 **THE COURT:** Now, that's the one who took the Fifth
17 Amendment during this case.

18 **MR. B. GUTIERREZ:** No, ma'am.

19 **MR. RUMLEY:** No, your Honor.

20 **THE COURT:** Oh.

21 **MR. B. GUTIERREZ:** This is the one that --

22 **MR. RUMLEY:** It's the notary.

23 **MR. B. GUTIERREZ:** -- the individual that testifies
24 that his signature had been forged.

25 **THE COURT:** So, I just told you about the

1 depositions. If you can't agree on what comes in, it's not
2 coming in.

3 **MR. B. GUTIERREZ:** Well --

4 **THE COURT:** I was very clear that that has to be done
5 at the final pretrial conference. The jury is downstairs
6 waiting.

7 **MR. B. GUTIERREZ:** Yes, your Honor.

8 **THE COURT:** We do not have time to go through this
9 now or during the trial.

10 **MR. B. GUTIERREZ:** I anticipated calling him, your
11 Honor, next week, which would be next Monday, and -- and we
12 had --

13 **THE COURT:** Better get him here, then.

14 **MR. B. GUTIERREZ:** We had -- ma'am? We --

15 **THE COURT:** Better get him here.

16 **MR. B. GUTIERREZ:** But we had discussed with counsel
17 that we would go over this this week, your Honor.

18 **THE COURT:** I just told you, if it's not agreed to,
19 it's not coming in.

20 **MR. B. GUTIERREZ:** He is outside the subpoena power,
21 your Honor. Mr. Frazier is.

22 **THE COURT:** Just saying. I'm very clear in my rules
23 here.

24 **MR. B. GUTIERREZ:** Yes, your Honor.

25 **THE COURT:** You know, because we don't have time to

1 do this now in the middle of trial. That's what the final
2 pretrial conference is for. In fact, I told you all that at
3 the final pretrial conference. I said -- they said, "When do
4 you want to take up the objections to depositions?" I said,
5 "We do them in the final pretrial conference."

6 **MR. B. GUTIERREZ:** Yes, your Honor, but they didn't
7 bring up their objections. It was --

8 **THE COURT:** Are there no objections to his testimony?

9 **MR. B. GUTIERREZ:** Well, I mean, they didn't bring
10 them up is what I'm --

11 **THE COURT:** Okay.

12 **MR. B. GUTIERREZ:** -- and that's why I need some
13 clarification from the Court, because we -- we intend to play
14 Mr. Frazier's deposition.

15 **MR. LOCHRIDGE:** Your Honor --

16 **MR. B. GUTIERREZ:** And --

17 **THE COURT:** Are there objections in his deposition?

18 **MR. LOCHRIDGE:** Yes, your Honor. There are
19 objections to Mr. Frazier's deposition.

20 **MR. RUMLEY:** Your Honor, Mr. Frazier's testified that
21 his signature was forged on the deed of trust and mechanic's
22 lien contract in this case, in this exact case. And he's
23 unavailable; he's beyond the subpoena range.

24 **THE COURT:** Okay. Well, then -- then, if they didn't
25 bring up the -- if they didn't bring up the objections timely,

1 all objections are waived. So, they go forward like that.

2 **MR. B. GUTIERREZ:** Thank you, your Honor.

3 **THE COURT:** Same with all the depositions.

4 **MR. B. GUTIERREZ:** Thank you, your Honor.

5 **MR. RANGEL:** Judge, they were made timely. They were
6 filed.

7 **THE COURT:** I am trying to tell you clearly as I can
8 that they were to be brought up at the final pretrial
9 conference. You all -- and I told you again at the final
10 pretrial conference they had to be brought up, all objections
11 to depositions. You asked me when they were due then. Do you
12 want to hear it back? And I said at the final pretrial
13 conference. I have it in writing. Final pretrial conference.
14 If they're not brought up, they're waived.

15 **MR. B. GUTIERREZ:** Thank you, your Honor.

16 **THE COURT:** And you offer what you want to offer, and
17 then the other side offers what they want to offer.

18 **MR. B. GUTIERREZ:** Yes, your Honor.

19 **THE COURT:** What else?

20 **MR. B. GUTIERREZ:** We're ready for the jury.

21 **(Pause)**

22 **THE COURT:** I don't care if he's got arresting power.
23 What does that have to do with anything? A12?

24 Okay. You all decide what you want to do with A12.
25 He says -- I don't know what this has to do with anything.

1 He's the one who says he's got a sick three-year-old. And he
2 says he's the primary caregiver and that a neighbor is staying
3 with the child now.

4 **MR. B. GUTIERREZ:** We have no objections, your Honor.

5 **THE COURT:** Twelve. Anybody?

6 **MR. RUMLEY:** No objections, your Honor.

7 **THE COURT:** Plaintiffs?

8 **MR. LOCHRIDGE:** No objection, your Honor.

9 **THE COURT:** A12 is struck; and A23 also is a primary
10 caregiver and has a child under 10 who she picks up after
11 school.

12 **MR. B. GUTIERREZ:** No objection.

13 **MR. LOCHRIDGE:** No objection, your Honor.

14 **THE COURT:** A23 is struck.

15 Anything else?

16 **MR. B. GUTIERREZ:** No, your Honor.

17 **MR. LOCHRIDGE:** We're ready to go, your Honor.

18 **THE COURT:** Everybody ready?

19 **MR. B. GUTIERREZ:** Yes, your Honor.

20 **MR. RUMLEY:** Yes, your Honor.

21 **THE COURT:** All right. Then we'll bring out the
22 jury.

23 Now, how much space do we need for the jury?

24 **MR. RUMLEY:** I think there was a question as to how
25 many.

1 **THE COURT:** How many what?

2 **MR. RUMLEY:** How many there are going to be in --
3 what is it -- one through seven?

4 **THE COURT:** Yeah; I'm asking Ms. Scotch how much
5 space we need. We've got about, I think, 43 jurors? Forty-
6 four? Forty-two? We just struck four or five.

7 **(Pause)**

8 Forty-two.

9 **MR. LOCHRIDGE:** With the ones that were struck, will
10 there be spots left or will people move up?

11 **THE COURT:** No; it will be on your chart.

12 **(The Court conferred with the clerk)**

13 **THE COURT:** Okay. Does this woman work outside the
14 home, Ms. Scotch?

15 **THE CLERK:** Let me find out.

16 **(The Court conferred with the clerk)**

17 -- Does she work outside the home?

18 **THE COURT:** Yeah.

19 One more excuse just came up for 20; said that she
20 and her mother, the grandmother, have joint custody of a three-
21 year-old. And the grandmother is in college till 2:00.

22 **MR. B. GUTIERREZ:** No objections from us, your Honor.

23 **MR. LOCHRIDGE:** No objection, your Honor.

24 **THE COURT:** Okay. Strike her. So, that takes us to
25 41.

1 So, where do you want the people seated on the back
2 there?

3 **MS. UNIDENTIFIED:** We're doing four rows back on one
4 side and three rows back on the other.

5 **THE COURT:** Four rows back on the left side; three
6 rows back on the right side?

7 **COURT SECURITY OFFICER PADILLA:** Three on this side,
8 your Honor, and then four on this side.

9 **THE COURT:** Okay.

10 **MR. LOCHRIDGE:** And how many will be in each?

11 **THE CLERK:** Seven. Seven in a row.

12 **MR. LOCHRIDGE:** Seven?

13 **THE CLERK:** Seven.

14 **THE COURT:** Seven rows?

15 **MR. LOCHRIDGE:** And there will be gaps for the ones
16 who were excused?

17 **THE CLERK:** Yes.

18 **THE COURT:** Actually, we'll give you a seating chart
19 with the X's on them.

20 **MR. LOCHRIDGE:** Oh, okay. Great.

21 **THE MARSHAL:** All rise.

22 (Recess was taken from 8:31 a.m. until 8:47 a.m.)

23 (Jury selection from 8:47 a.m. until 11:02 a.m.)

24 transcribed under separate cover; resume transcription at 11:19
25 a.m.)

1 (Outside the presence of the jury)

2 THE COURT: Are you all ready for the jury to come
3 in?

4 MR. B. GUTIERREZ: Yes, your Honor.

5 MR. LOCHRIDGE: Yes, your Honor.

6 THE COURT: Oh, the notes? Everybody okay with
7 notes?

8 MR. B. GUTIERREZ: No problem with us.

9 THE COURT: Okay.

10 THE CLERK: Do you want me to just set them down?

11 THE COURT: Pardon?

12 THE CLERK: Do you want me to set them down?

13 THE COURT: Sure.

14 (Pause)

15 MR. LOCHRIDGE: Your Honor, may I approach?

16 (Voices and whispers off the record)

17 THE COURT: We'll do it at the break. Is that okay?

18 MR. LOCHRIDGE: Yeah. It's a minor matter.

19 RECORDER: Do you want to go off the record?

20 THE COURT: No, because they're coming in.

21 THE MARSHAL: All rise for the jury.

22 (The jury entered the courtroom at 11:20 a.m.)

23 THE COURT: Thank you. You may be seated.

24 We've put some notebooks there, just to tell you that
25 if you would like to take notes during the trial, you may do

1 so. On the other hand, you are not required to take notes if
2 you prefer not to do so. Each of you should make your own
3 decision about this. If you decide to take notes, be careful
4 not to get so involved in note-taking that you become
5 distracted from the ongoing proceedings. Your notes should be
6 used as memory aids only. You should not give your notes
7 precedence over your independent recollection of the evidence.

8 If you do take notes, you should rely upon your own
9 independent recollection of the proceedings, and notes are not
10 entitled to any greater weight than memory or impression of
11 each juror as to what the testimony may have been. Whether you
12 take notes or not, each of you must form and express your own
13 opinion as to the facts. If you do take notes, you may not
14 share your notes with any other juror.

15 Are you ready to proceed with opening statements,
16 Mr. Rangel?

17 **MR. RANGEL:** Yes, your Honor.

18 **THE COURT:** Thank you.

19 **MR. RANGEL:** May it please the Court, Counsel.

20 Good morning. I was introduced earlier today, and my
21 name is Jorge Rangel. I am one of the attorneys representing
22 Vanderbilt, CMH Homes, and CHI.

23 There are a number of parties here, and I wanted to
24 explain why we are here. Vanderbilt filed this lawsuit to
25 repossess the mobile home that it sold to Mr. King and

1 Mr. Flores because Mr. King and Mr. Flores broke their promise.
2 When they bought the mobile home, they promised to pay for it.
3 they signed a contract. And there is no question that they
4 signed the contract. The purpose of this opening statement is
5 to give you a roadmap of what we believe the evidence is going
6 to show. Ultimately the evidence will come from the witness
7 chair and from the documents that the Court will allow into
8 evidence. But we are here seeking to repossess the mobile
9 home. And in that sense we, Vanderbilt, is the plaintiff.
10 Vanderbilt has the burden of proof on our claim seeking to
11 repossess the mobile home.

12 Mr. King and Mr. Flores answered and filed a
13 counterclaim against my client. They have the burden of proof
14 on their claim. And then the Trevinos -- Arturo and Maria
15 Trevino -- intervened and filed a lawsuit, a claim against
16 Vanderbilt, CMH Homes, and CHI. I know it's involved and it's
17 complicated, but the Court will give you the instructions and
18 explain where the burden of proof is.

19 Really, we have three stories that will be presented
20 to you. The first one deals with the purchase of the mobile
21 home by Mr. King and Mr. Flores. It was about nine years ago
22 that Mr. King and Mr. Flores decided that they wanted to buy a
23 mobile home and live in it together. It was late December,
24 2001. They were driving around and they saw the CMH homes
25 facility, and they stopped, they looked, and they identified

1 two of the homes, and one that they were interested in.

2 They came back for a second visit. They found the
3 one they wanted. They chose the one they wanted. They signed
4 the contract, and they agreed to pay for it. Before they
5 signed the contract, they knew that they had to make 144
6 payments of about \$500 each. They signed a number of documents
7 there. But there is no question that before they signed the
8 contract they knew that they were taking on a serious
9 obligation. And they knew that if eventually they would
10 default and not be able to pay for it, that Vanderbilt would
11 have the right to repossess.

12 Now, the home was purchased from CMH Homes, the
13 retailer. You will see the contract on its face shows that it
14 was assigned, that it was transferred, to Vanderbilt.
15 Vanderbilt was financing the transaction. So, once it was sold
16 to Mr. King and Mr. Flores, going forward, Mr. King and
17 Mr. Flores were going to deal directly with Vanderbilt. They
18 were going to make the payments to Vanderbilt. They would
19 communicate with Vanderbilt. They knew that their obligations
20 going forward would be to Vanderbilt.

21 Now, before they were approved for the financing,
22 they submitted credit applications. They submitted income
23 information. The evidence is going to show that at the time
24 Mr. Flores was working as a hairdresser and Mr. King was
25 working at a funeral home. They submitted income information

1 that will show that they qualified for the purchase of a mobile
2 home, which was about \$40,000.

3 Now, there was something unique about this particular
4 transaction. Ordinarily, when you buy a home, you have to make
5 a down payment. Well, CMH Homes had a program in place that
6 would eliminate the need to make a down payment. It was called
7 a "land-in-lieu" program, land in lieu of having to make a down
8 payment. In other words, if a customer -- prospective
9 customer -- wanted to buy a mobile home, did not have the money
10 to make a down payment, even though would qualify for the
11 purchase of the home, if the customer would identify land that
12 was available that could be used as additional collateral for
13 the purchase of the mobile home, then that land would be --
14 would provide the basis for the down payment. And that's what
15 happened here.

16 Mr. Flores's sister, Maria Trevino, and her husband,
17 Arturo Trevino, owned two lots in Jim Wells County: Lot 35 and
18 Lot 36. And as part of the transactions, part of the purchase
19 of the mobile home, those two lots were pledged as additional
20 security for the purchase of the mobile home. Eventually the
21 mobile home was placed on Lot 36, which was a vacant lot.

22 Now, at the time of the transaction, Mr. King and
23 Mr. Flores signed a retail installment contract. And the
24 retail installment contract, which is in evidence and you will
25 see, identified the obligation. The contract also referred to

1 the land being pledged as security. In addition to the
2 contract, there was a deed of trust and a builder's and
3 mechanic's lien filed. And there is -- that's one of the
4 issues in this case, that Maria Trevino and Arturo Trevino
5 claim that they did not sign the deed of trust and the
6 builder's and mechanic's lien. The deed of trust and the
7 builder's and mechanic's lien covered or provided for a lien on
8 the land. And I think it's very important that you keep that
9 in mind, and the evidence will show this.

10 We're talking about the mobile home and the
11 indebtedness to the mobile home, and the indebtedness was taken
12 on by Mr. King and Mr. Flores. That is addressed in the retail
13 installment contract. The lien on the land, that was through
14 the deed of trust and the builder's and mechanic's lien, that
15 related to the land, and those documents carry the signatures
16 of the Trevinos and, of course, they are contesting that they
17 signed them. And there will be evidence that will deal with
18 that, and we will bring in an expert that will address those
19 signatures, just like the Trevinos will bring their own expert
20 to deal with the issues on those signatures.

21 So, on January 16th of 2002, after all of the
22 paperwork had been signed, Vanderbilt -- Vanderbilt -- accepted
23 the assignment and paid CMH Homes, the seller of the mobile
24 home, for that assignment; paid, made an intercompany transfer,
25 of about \$40,000. So, at that point CMH Homes is out of the

1 picture and then the payments are being made to Vanderbilt.

2 After that assignment, Mr. King and Mr. Flores
3 continued -- or started and continued to make the payments.
4 The first payment was in March of 2002. And the evidence is
5 going to show that they lived and made payments on that mobile
6 home for seven years. Seven years. They started making
7 payments in March of 2002, and the evidence is going to show
8 that they stopped making payments in the spring of 2009.

9 Throughout that seven-year period, Vanderbilt --
10 there's going to be evidence about contacts that Vanderbilt had
11 with Mr. King and Mr. Trevino when there were issues about
12 payment. And that -- we're going to have a representative from
13 Vanderbilt who will come and testify about the discussions and
14 communications that Vanderbilt had with Mr. King and
15 Mr. Flores. But throughout that period they were making the
16 payments. There were some issues along the way, but they were
17 worked out.

18 Unfortunately, in the spring of 2009, the payments
19 stopped. And what happened? For personal reasons, Mr. King
20 and Mr. Flores could no longer get along, and Mr. King moved
21 out. Mr. King, in effect, abandoned the mobile home, abandoned
22 his obligation, and really left it up to Mr. Flores to go
23 forward to pay on the mobile home. Shortly thereafter notices
24 were sent to Mr. Flores and Mr. King indicating that they were
25 in default. Notices were sent notifying of an intent to

1 accelerate the debt. Notices were sent indicating that the
2 debt had been accelerated and again encouraging them to make
3 arrangements.

4 The evidence is going to show that Vanderbilt --
5 Vanderbilt -- would prefer for an owner, a homeowner, to stay
6 in the home. The last thing that Vanderbilt wants to do -- the
7 last thing that Vanderbilt wants to do -- is repossess a home.
8 And that's why the evidence is going to show that they worked
9 real hard at trying to help Mr. Flores stay in the home,
10 because by that time Mr. King had left and moved to Refugio.
11 But when no payments were received, then Vanderbilt had no
12 choice but to file the lawsuit, in accordance with the terms of
13 the contract, the contract that was voluntarily and knowingly
14 signed by Mr. King and Mr. Flores.

15 You will hear them from the witness stand admit that
16 they signed that contract, that that is their signature. There
17 is no question about their signature. And, so, Vanderbilt
18 exercised its right to seek repossession, and that's why
19 Vanderbilt is the plaintiff and that's why Vanderbilt is here
20 trying to seek repossession.

21 So, then, you probably are asking yourself: Well,
22 wait a minute; if they agreed to make 144 payments, if they
23 only made 84 payments, if they agreed that they owed the money,
24 or at least they agreed that they didn't make all the payments,
25 that they had not paid in full for the mobile home, what is

1 their defense? Well, that gets us into the second story.

2 The first story is the transaction, the history of
3 the payments, and ultimately not paying. So, when Vanderbilt
4 files the lawsuit in August of 2009, the response we get from
5 Mr. King and Mr. Flores is: We don't owe the money. We don't
6 owe the money because there was a document filed -- there were
7 a couple of documents filed in October of 2005, which means --
8 which, in effect, resulted in us not having to pay the money
9 anymore.

10 And, so, what are they referring to? That gets us
11 into the second story, or the second part of this lawsuit.
12 What happened is that at the CMH retail store there were some
13 issues that came up with notary practices. And you've heard in
14 some of the questioning -- although there is no evidence about
15 that -- you heard in some of the questioning that there were
16 some issues with notary practices, sloppy practices. There
17 were some allegations; there were some claims about how the
18 notaries were exercising their duties and responsibilities.
19 And that was happening at the sales center 214.

20 Well, when that information got to Tennessee, you're
21 going to hear evidence directly from the president, Kevin
22 Clayton, of CHI. Mr. Clayton is the son of the founder of
23 Clayton Homes. And when he became aware of that, he left a
24 company-wide voice mail explaining -- explaining that that was
25 unacceptable and setting out that the company was going to do

1 something about it. And, in fact, new notary practices and
2 policies were instituted.

3 Well, what else was done? The complaints and the
4 problems at store 214 related to liens on the land. Remember I
5 had told you of this land-in-lieu program, in addition -- that
6 there was a deed of trust and builder's and mechanic's lien to
7 deal with the land in this land-in-lieu program. Since -- and
8 there were questions. There were questions about -- that had
9 been raised about those documents.

10 You're going to hear evidence. You're going to hear
11 evidence that the president, Mr. Nichols, of Vanderbilt and the
12 president of CMH -- CMH Homes, Mr. Booth, decided, look, since
13 there are questions being raised about these documents dealing
14 with the land, what we are going to do is release the liens on
15 the land. The land only. And that's what was done. Releases
16 were filed, including releases on the land, Lots 36 and 35,
17 those lots that belonged to Maria and Arturo Trevino.

18 And, so, the intent -- and you will hear this
19 directly from the two decision makers -- the intent in filing
20 those releases was to release the liens on the land. In no way
21 was it ever intended that those releases would release the
22 indebtedness, the underlying indebtedness, that was owed by
23 Mr. King and Mr. Trevino. So, that's why I was saying a while
24 ago that -- how did they come back and say, "Well, we don't owe
25 the money"? You heard Mr. Gutierrez state in one of his

1 questions this morning -- he made reference to the debt being
2 satisfied. The evidence is going to be very clear here that
3 the debt has not been satisfied. Mr. King and Mr. Flores have
4 not paid in full those 144 payments. What they are saying is
5 that these releases of the liens on the land somehow release
6 their indebtedness. And the evidence is going to be clear that
7 that is not what happened.

8 In fact -- and these two exhibits have already been
9 admitted into evidence -- I'm going to call up CP13 and CP12.

10 **(Pause)**

11 CP13. This is one of those releases that I was
12 telling you about, and this is the mechanic's lien release.
13 And the word "release" is there, and this is what Mr. King and
14 Mr. Flores are seizing on, that this somehow released their
15 debt. And they point to the language "paid in full." So,
16 they're saying, "That language states that our debt has been
17 released and that, in effect, we've paid it in full." That
18 is -- the evidence is going to be absolutely clear that that
19 did not happen. That did not happen.

20 And to the extent they're going to be relying on this
21 document, I want you to note that nowhere in that document are
22 the names of Cesar Flores or Alvin King. In fact, the only
23 names that are there are Maria Trevino and Arturo Trevino, the
24 landowners. The landowners. Which is consistent with what the
25 evidence is going to show, that the purpose of that release was

1 to release the lien on the land only. The lien on the land.

2 And also keep in mind that Mr. King and Mr. Flores
3 had signed a retail installment contract. That was where their
4 debt was. Nowhere in that document is there any reference to
5 the retail installment contract. In fact, there is a reference
6 to a contract, and it says "mechanic's lien contract." So, on
7 its face there is nothing that shows that the underlying
8 indebtedness that Mr. King and Mr. Flores owed had been
9 released.

10 And, then, finally, this release was signed by CMH
11 Homes, Inc.; CMH Homes, Inc., the original seller of the home.
12 By this time the contract that was signed by Mr. King and
13 Mr. Flores had been assigned to Vanderbilt. It had been
14 assigned to Vanderbilt. So, the debt was owed to Vanderbilt.
15 Nowhere in this document is there anything that says that
16 Vanderbilt is releasing the indebtedness. So, to be clear, to
17 the extent that they're going to be relying on this document to
18 say that somehow their debt has been released, there is no
19 basis for it.

20 The other document that they're going to point -- oh,
21 and keep -- look at the property description. Lot 35 and 36,
22 Block 1, Gallimore Additon. Those are the two lots that were
23 pledged as security with respect to the purchase of a mobile
24 home. There is nothing in there that refers to the retail
25 installment contract or to the indebtedness.

1 They're also going to point to the deed of trust
2 release, which is CP Number 12. And this was signed by
3 Vanderbilt, but this was with respect to the deed of trust,
4 again relating to the land. Nothing -- again, there is nothing
5 in this document, the evidence will show, and you can see it,
6 that refers to Cesar Flores or Alvin King. There is nothing in
7 this document that refers to the retail installment contract.
8 In fact, the names of Maria Trevino and Arturo Trevino are
9 there, not the names of Cesar Flores and Alvin King.

10 So, again, that is consistent with what Mr. Nichols
11 and Mr. Booth are going to testify, that these two releases
12 were filed in order to release liens on land. The problem that
13 had been identified at sales center 214 dealt with paperwork
14 relating to the land, the problem related to the land.
15 Therefore, the solution to the problem was to release whatever
16 lien that was created by the deed of trust and the builder's
17 and mechanic's lien on the land. And, frankly, it's that
18 simple. Mr. King and Mr. Flores are taking these two documents
19 and saying, "Those documents mean that we do not have to pay
20 our debt, because it's been paid in full." The evidence is
21 going to be clear that that did not happen.

22 So, I mean, the documents speak for themselves, but
23 you also are going to hear from the individuals who were
24 involved with the decision to deal with the problems at 214.
25 And there will be -- it will be absolutely clear -- absolutely

1 clear -- that the intent was to release the land only, not the
2 underlying indebtedness.

3 So, as you listen to the testimony regarding their
4 interpretation of what these documents mean, just focus on the
5 language; focus on the testimony by the witnesses; and focus on
6 your common sense.

7 Now, the third part of this story has to do with
8 Arturo and Maria Trevino. As I mentioned, the first part had
9 to do with the transaction, the purchase of a mobile home. The
10 second part had to do with the problems at Lot 214 that we
11 addressed by these releases. Well, the third part is, after we
12 filed a lawsuit against Mr. King and Mr. Flores, Maria and
13 Arturo Trevino intervened into the lawsuit and say, "Well, wait
14 a minute. We didn't know anything about these liens on our
15 land, so we're going to file a lawsuit against Vanderbilt, CMH
16 Homes, and CHI."

17 Well, you will be able to listen to the evidence in
18 terms of whether they, in fact, knew about those documents
19 being filed. There's going to be the issue about the
20 signatures. But you're going to find that the suggestion that
21 there was -- nobody knew anything, that Cesar Flores and Alvin
22 King did not know anything about the property being used as
23 collateral, is not going to be supported by the evidence.

24 There is going to be evidence of these documents that
25 were signed. And, more importantly, you're going to see

1 evidence two days before the mobile home was purchased -- two
2 days before -- the contract was signed January 5th, 2002. On
3 January 3rd, 2002, a fax was received by CMH Homes from the HEB
4 store in Alice. And that fax consisted of the application for
5 Mr. King, Mr. Flores, credit information, personal history.
6 And what else was in that fax? The fax contained a copy of the
7 deed to Lots 35 and 36 to Maria and Arturo Trevino. And the
8 deed was -- contained the description, the precise description,
9 that ended up in the documents. And the reason I'll emphasize
10 that is because there was a misspelling in the property
11 description. That misspelling ended up in the documents that
12 were signed.

13 And Mr. King need Mr. Flores, the evidence is going
14 to show, have taken the position that they didn't know anything
15 about that fact; they don't know who sent their personal
16 information to CMH Homes. They don't know who sent that
17 property description. And as you listen to that evidence, you
18 have to ask yourself, using your common sense, "Does that make
19 sense"?

20 There's going to be evidence presented that, in
21 fact -- that, in fact -- Mr. King and Mr. Flores knew --
22 knew -- that those lots had been pledged as additional
23 security. There's going to be evidence from questions that
24 they were asking when talking to Vanderbilt with respect to the
25 status of the liens on those lots.

1 So, you have to ask yourselves: How could it be
2 possible that they would buy this mobile home, participate in
3 this land-in-lieu program, and somehow say that they had no
4 knowledge -- they had no knowledge -- that these lots had been
5 pledged as security? Ultimately you are going to have to
6 decide the credibility of those statements.

7 And, so, in the end, really, it's a very simple case.
8 It started with Vanderbilt filing an action to repossess the
9 home, which it had a right to do, it has a right to do under
10 the contract. And then, after that, we hear this theory that
11 Mr. King and Mr. Flores are no longer obligated because their
12 debt has been released. And they're going to point to those
13 two documents that I've showed you that they're in evidence,
14 and you will see. And as you go through those documents, ask
15 yourself: Where is the basis for the claim that the
16 indebtedness has been released? The evidence is going to show
17 that there is no basis.

18 Similarly, with respect to the claims about the
19 signatures, you will have to ask yourself: Does it make sense
20 when you look at the history of the transaction, the history as
21 to how that property description was sent to CMH Homes? And,
22 so, when you listen to the arguments and the evidence that they
23 are presenting, that those are not their signatures or that
24 they didn't know anything about it, you will have to consider
25 all of the evidence and determine whether from a standpoint of

1 common sense and from a standpoint of credibility that makes
2 any sense.

3 Ultimately, you will make your decision based on the
4 instructions that the Court's going to give you and based
5 upon --

6 **THE CLERK:** Five minutes.

7 **MR. RANGEL:** -- based on the evidence that you will
8 hear. But you need to keep in mind -- and listen to the
9 witnesses, and, particularly, listen to the witnesses who were
10 involved in the decision to release those liens. One thing
11 that will be absolutely clear is that the intent in filing
12 those releases had to do with releasing the lien on the land
13 and that in no way were those releases intended to release the
14 indebtedness.

15 So, as you consider everything -- and you will hear
16 from the other side shortly -- wait to till you hear all of the
17 evidence, listen to the evidence, and then answer those
18 questions: Is what they are saying something that's credible,
19 that makes sense? And as they present their arguments -- I'm
20 going to sit down in a minute and they're going to get up and
21 they're going to tell you this is what the evidence is going to
22 show from their standpoint. But nothing they say will change
23 the facts. The facts are that Mr. King and Mr. Flores agreed
24 to pay for a mobile home, they stopped paying, they have not
25 paid, Vanderbilt is entitled to repossess that home, and those

1 releases that were designed to address a problem that dealt
2 with liens on land at Lot 214 did not release the indebtedness.

3 Thank you very much for your attention, and we look
4 forward to presenting evidence to you.

5 **THE COURT:** Thank you.

6 **(Pause)**

7 **MR. J. GUTIERREZ:** May it please the Court.

8 Good morning. Now that Mr. Rangel has said his piece
9 on behalf of the Clayton Homes organization, it's my turn to
10 tell you the rest of the story.

11 A company may not demand payment from someone if
12 there is no money due them. If a company releases a debt, it
13 may no longer collect on it. And if a company tries to collect
14 on a debt that has been released, it's responsible for all the
15 harm it causes to the person it tried to collect from.

16 Let me tell you the story of the Clayton Homes
17 organization in Corpus Christi. The companies of Vanderbilt
18 Finance and Mortgage, Clayton Homes, Incorporated, and CMH
19 Homes, Inc. are based in Tennessee. Together they make up what
20 I'll refer to as the Clayton Homes organization. They're in
21 the business of selling mobile homes. And sometime in the late
22 nineties or early two thousands they were heavily involved in
23 promoting a sales program in this area. This program proved to
24 be very successful for them. The program was called the "land-
25 in-lieu" sales program.

1 The land-in-lieu program was a sales promotion to
2 mobile home customers. The program guaranteed anyone,
3 regardless of their credit, a mobile home if they brought a
4 deed of land with them to Clayton Homes. The land could belong
5 to anyone. It didn't need to belong to the person who wanted
6 to buy the mobile home. Clayton Homes guaranteed that you'd be
7 approved for a mobile home if you brought a deed of lien to
8 them. They advertised this program on TV, radio, and
9 newspaper. And, as you can imagine, this program was very
10 appealing to people who wanted to buy a mobile home.

11 The evidence will show, however, that to make this
12 program work even better, Clayton Homes built a compensation
13 structure that encouraged its sales managers and its
14 salespersons to work really aggressively to sell these mobile
15 homes. They were guaranteed bonuses on the sale of these
16 mobile homes. The evidence will show that this program was
17 very successful and very appealing, but the evidence will also
18 show that there was a dark side to this program.

19 The evidence will show that the salesmen and the
20 sales managers, the same individuals who owned -- who earned
21 bonuses on the sale of the homes, they were also entrusted with
22 the responsibility of notarizing all the documents in these
23 transactions and verifying that all the signatures were true
24 and correct. That is, instead of the closings, the purchases
25 of the mobile homes taking place at a title company with an

1 independent third party, like a lawyer or someone from the
2 title company, the deals were closed at the Clayton Homes store
3 as per Clayton Homes policy.

4 And the evidence will show that notary fraud occurred
5 in these stores. The evidence will show that salesmen falsely
6 notarized documents. And it wasn't just sloppy practices like
7 Mr. Rangel said. They were fraudulent practices. There were
8 forgeries involved. And you will hear and you will see
9 evidence of this notary fraud from witnesses that will testify
10 that it happened to them. The evidence will show that this
11 fraud was a hidden component of that land-in-lieu program.

12 Now, recall that the land-in-lieu program instructed
13 would-be purchasers to bring a deed of land with them when they
14 go to Clayton Homes. The evidence will show that customers
15 were told that the purpose for bringing the deed of land was so
16 that Clayton Homes knew where to put the mobile home after it
17 was bought. Many customers didn't own land, like I've said
18 before. So, typically, they'd ask a family member or a friend
19 for permission to place the mobile home on their land. When
20 they'd get that permission, the mobile home purchaser would
21 take a copy of that deed with them to the Clayton Homes store
22 and Clayton Homes would know where to put the mobile home.

23 But the evidence will show that Vanderbilt and CMH
24 were placing fraudulent liens on that land. You will see, you
25 will hear evidence, that neither the mobile home purchasers nor

1 the landowners who had given their permission knew that this
2 was happening. They did not know that liens were being taken
3 on their land.

4 The evidence will show that the liens were placed on
5 that land as collateral for the mobile home; so that if the
6 mobile home purchaser defaulted, not only would they lose their
7 mobile home, the landowners -- who had simply given permission
8 to place the mobile home on their land -- the landowners would
9 also lose their land.

10 And why was Clayton Homes using land as collateral in
11 the first place? The evidence will show that the Clayton Homes
12 organization was packaging all of these loans and selling them
13 to investors, and loans backed by land are more valuable than
14 loans not backed by land.

15 Ultimately, in 2003, landowners and purchasers began
16 discovering liens on this land, began discovering notary fraud,
17 legal action was taken, and in response to that these companies
18 made a bold decision. In 2005, the Clayton Homes organization
19 decided: We're going to close the Corpus Christi store; we're
20 getting out of Corpus Christi. But that's not all that they
21 did.

22 In October of 2005, Clayton Homes companies released
23 liens on nearly every piece of property it had taken a lien on
24 emanating from the Corpus Christi store. Hundreds of liens
25 were released. Releases were filed in October of 2005, and

1 they looked like this. This is Exhibit Number 11,
2 Plaintiffs' -- that is, the Clayton -- the Flores/King parties'
3 Exhibit Number 11. And this, in fact, is the same document
4 that Mr. Rangel showed you. It indicates a loan number. That
5 number is a loan number. It indicates that CMH Homes -- it
6 references Maria Trevino, Arturo Trevino, landowners. It
7 states that for valuable consideration in hand paid, CMH Homes
8 does hereby release the lien of said mechanic's lien contract
9 and has been paid in full.

10 Now, earlier it was said that there is no reference
11 to any contract, any purchasers' names. This number refers to
12 a loan. It refers to a retail installment contract, and this
13 is -- this is Exhibit -- Clayton Parties Exhibit Number 1,
14 646307; 646307.

15 Releases were filed, like this one, Exhibit Number
16 12, deed of trust release. Vanderbilt, for valuable
17 consideration, does hereby release lien of said deed of trust;
18 also referencing Cesar Flores, also referencing the same loan
19 number. Thank you.

20 CMH Homes's president will testify that Vanderbilt
21 filed these releases because of allegations of notary fraud in
22 Corpus Christi. They'll testify that after they closed the
23 store the decision was made to release all outstanding loans.
24 The evidence will show that not only was Mr. Booth involved in
25 this decision, the board of directors of his company was

1 involved; the board of directors for Vanderbilt; Vanderbilt's
2 president, Mr. Nichols; the general counsel; their top lawyer,
3 Tom Hodges, was also involved in that decision. These top-
4 level executives authorized the releases that say "paid in
5 full," like you've seen, that say that the deed of trust is
6 released. They authorized releases referencing contracts.

7 So, did purchasers of Clayton Homes' Corpus Christi
8 store stopped paying on their mobile homes when these documents
9 were filed in 2005? After all, the documents stated "paid in
10 full." Well, the evidence will show that purchasers and
11 landowners were never told that these releases were filed.
12 Clayton Homes didn't mail copies of these releases to
13 purchasers and landowners. And the Clayton Homes organization
14 admits that it did not notify purchasers and landowners that
15 these releases were filed.

16 Thus, the evidence will show that the Clayton Homes
17 organization promoted the land-in-lieu program, allowed its
18 salesmen to act as notaries, learned that those salesmen had
19 committed notary fraud, released these liens, didn't tell the
20 customers, and that even after these liens were released, they
21 continued to collect money from their customers. And, in fact,
22 on customers who failed to make their payments, even after
23 these releases were filed, they filed lawsuits against those
24 customers.

25 Vanderbilt sued two such people, and that's why

1 you're here today. You're here because Vanderbilt has sued
2 Cesar Flores and Alvin King, those two young men, to take away
3 their mobile home. You're here because Vanderbilt is suing
4 them for thousands of dollars. And I am here because I'm
5 defending them; because the evidence will show that Flores and
6 King went to Clayton Homes to buy a mobile home. The evidence
7 will show that Ms. Trevino and Mr. Trevino gave Alvin and Cesar
8 permission to use their land to place the mobile home on. The
9 evidence will show that CMH and Vanderbilt forged the Trevinos'
10 names to deeds of trust, placed liens on the Trevinos' land,
11 didn't tell any of these people that liens were taken on that
12 land. And the evidence will show that, just like in all the
13 other cases that I described, Vanderbilt and CMH filed releases
14 in October of 2005 releasing Flores and King from their
15 obligation, stating that the contracts were paid in full. But
16 the evidence will also show, of course, that Vanderbilt and CMH
17 didn't tell Flores and King that it had filed these releases.
18 Instead, they continued to collect money, close to \$30,000,
19 from Flores and King, and they even now have filed a lawsuit
20 against Flores and King.

21 In order to prevail, Vanderbilt has to prove
22 something right off the bat. Remember Vanderbilt didn't sell
23 the mobile home; CMH did. CMH sold the mobile home, and
24 Vanderbilt said, "Well, CMH assigned the contract to us."
25 They're going to tell you about intercompany transfers and

1 documentation; but at the end of the day, Vanderbilt will be
2 unable to explain to you why, if they had the right under this
3 contract, why CMH Homes continued to assert its rights under
4 the contract. No assignment ever occurred. They have the
5 burden to prove it, and the evidence will show that they cannot
6 meet that burden. They do not have the right. They do not
7 have the right to take the mobile home away from Flores and
8 King.

9 Now, whether or not there was an assignment,
10 Vanderbilt still can't take away the mobile home, because
11 they've released them from any obligation, like I've told you
12 about. The releases state -- and I'll go back to Exhibit
13 Number 11; Flores/King/Trevino Exhibit Number 11. The releases
14 state: paid in full. For valuable consideration in hand paid,
15 CMH Homes has been paid in full, referencing 646307, which, not
16 coincidentally, corresponds with Exhibit 1. And you will have
17 this with you in the jury room, the retail installment
18 contract, buyers Cesar Flores, Alvin King; 646307. Paid in
19 full.

20 Just to be double sure that they meant paid in full
21 and they meant that this was released, they referenced 646307
22 on Exhibit Number 12 referencing Cesar Flores by name:

23 "For valuable consideration in hand paid, Vanderbilt
24 does hereby release the lien of said deed of trust
25 and/or mortgage."

1 The evidence will show that these documents mean that
2 these companies are abandoning their right to collect money and
3 to take the mobile home away from Flores and King. Why does it
4 mean this? Like Mr. Rangel said, the documents speak for
5 themselves, ladies and gentlemen. The documents reference a
6 loan number. They state "paid in full." They have to mean
7 paid in full.

8 Now, they'll argue that they're just releasing claims
9 to the land, not the money owed under the contract. But you'll
10 hear and you'll see evidence that if Clayton Homes had intended
11 only to release the land, they could have filed documents that
12 didn't say "paid in full." They've done that before. They
13 intended to release the debt.

14 And because Vanderbilt and Clayton Homes released the
15 debt and continued to collect money, Flores and King have
16 rights against Vanderbilt. Flores and King have a right to
17 assert an unfair debt collection case against these companies,
18 a fraud case against these companies. Why? Because Vanderbilt
19 knew that these documents were filed. They hid these
20 documents, did not tell these people that these documents were
21 filed, they continued to collect money. Not only that, they
22 made collection calls, threatening letters, threats to
23 foreclose, even though they had asserted in documents
24 referencing loan numbers, referencing their names, that they
25 have been paid in full. And for that, Vanderbilt must pay back

1 Flores and King for what they did. They must pay back the
2 money they took after these documents were filed in secret, the
3 motivation of which was because of the notary fraud that was
4 happening in Corpus Christi; notary fraud that was so great
5 that the whole Corpus Christi store was closed.

6 Now, lastly, the evidence will show that Vanderbilt
7 violated the Racketeer Influenced and Corrupt Organizations
8 Act, also known as the "RICO Act." Racketeering --

9 **THE CLERK:** Fifteen minutes.

10 **MR. RUMLEY:** Thank you, Ms. Scotch.

11 Racketeering? A "racket" means organized criminal
12 activity, a fraudulent scheme or business. The evidence will
13 prove that Vanderbilt, Clayton Homes, Inc., its salesperson,
14 the entire organization, was an enterprise engaged in a racket
15 of mail and wire fraud.

16 What was the mail and wire fraud? They used the
17 mail, they used the wires to file these documents. They used
18 the mail and the wires to take liens on the land to begin with;
19 and they used the mail and the wires to make collection calls,
20 threats, and are even using the courthouse to file a fraudulent
21 lawsuit against Flores and King.

22 The other racket they were involved in under the RICO
23 Act was money laundering. How did money laundering occur? Ill
24 gotten gains. Money taken from these people after these
25 releases were filed for ill-gotten gains in violation of the

1 RICO act. So, at the end of the case, I ask you: Yes; the
2 documents will speak for themselves. Yes; use your common
3 sense.

4 Mr. Rumley will now say his piece on behalf of
5 intervenors.

6 **THE COURT:** Thank you.

7 You may proceed.

8 **MR. RUMLEY:** Good morning.

9 No one really explained what an opening statement is.
10 Opening statement is the chance for the lawyers to talk to you
11 and tell you what they believe the evidence is going to show.
12 And I think it's real interesting; you heard from Mr. Rangel,
13 and he describes his case as three stories. I think there is
14 some truth to that.

15 You heard story number two -- and I wrote this
16 down -- and Mr. Rangel was referring to the deed of trust
17 releases and the mechanic lien releases. And you remember him
18 saying -- and I wrote this down -- these don't even mention the
19 contract. These don't even mention Cesar Flores or Alvin King.
20 Do you remember him saying that? That's why what comes out of
21 my mouth right now is not evidence. What comes out of this
22 man's mouth is not evidence. But what is evidence? These are
23 evidence. This is already in evidence. And when we look at
24 Exhibit Number 11, you see right here 646307. That's the
25 contract. That's the contract. This is evidence. What he

1 says is not evidence.

2 If we look at what Mr. Rangel was saying, he was
3 saying about this assignment that CMH in '05 didn't own the
4 loan. Well, if you look -- this is David Jordan. He's an
5 officer of CMH. And if you look right here, it says CMH
6 declares that it is the true and lawful owner and holder of a
7 certain note and indebtedness. Guess what note and
8 indebtedness they're referring to? Six four six three-o-seven,
9 the installment contract. And guess what? It's paid in full.
10 Paid in full. And he signed this under the authority of the
11 board of directors.

12 What else? The deed of trust. Mr. Rangel said the
13 deed of trust release -- this release -- did not mention Cesar
14 Flores, did not mention a contract. You heard him say it.
15 Look. Cesar Flores; contract; 646307. And guess what? They
16 released the mortgage.

17 What you see is evidence. What comes out of the
18 lawyers' mouths is not evidence.

19 This is a case about forgery. Forgery. This all
20 boils down to forgery. Forgery of landowners' signatures,
21 forgery of notary signatures. And that's one thing that you
22 didn't hear from them. You didn't hear from them. Their sales
23 associate, their assistant store manager, was also a notary.
24 And you heard a little bit about this land-in-lieu, where they
25 allowed these people to notarize documents. Notarize

1 documents. Well, guess what they didn't tell you? Guess what
2 the rest of the story is. Benjamin Frazier, signature on these
3 documents, is forged, too. Their own notary, their own store
4 manager's signature was forged.

5 What the evidence is going to show in this case --
6 and you mentioned there's a deed of trust. And this has been
7 admitted as Exhibit Number 6. This is the deed of trust. In
8 this deed of trust there are signatures. And if we look, the
9 signature of Maria Trevino, Arturo Trevino; those are not their
10 signatures. Those signatures have been forged.

11 If we look at Exhibit Number 7, which is this
12 builder's and mechanic's lien contract, again, if we look at
13 the signatures, these signatures are forged. They did not sign
14 these documents.

15 And someone during jury selection asked -- they
16 raised their hand and said, "Wait a minute" -- when I was
17 asking that question, and I think it was confusing, and talking
18 about evidence -- and someone said, "Well, what about the
19 notary?" I mean, if the document's notarized, why don't we
20 just ask the notary? Okay? For sure we can talk to the
21 notary, the man that notarized, supposedly, my clients signing
22 these documents. Let's just talk to the notary. You didn't
23 hear about it from them.

24 If we look at this page, you'll see a notary stamp
25 right here, Benjamin Frazier. And you'll hear from Benjamin

1 Frazier. You'll hear from Benjamin Frazier, but I would lend a
2 bet that you're going to hear from him when we put on our case.
3 The Benjamin Frazier who was a assistant store manager, his
4 signature right here is forged. He's going to testify his
5 signature was forged. This signature right here is forged.
6 His signature is forged. If we look at the deed of trust,
7 he'll testify that this signature is forged. He'll testify
8 this signature is forged. He'll testify this signature is
9 forged.

10 And what you're going to hear from Mr. Frazier -- we
11 asked him: "Mr. Frazier, if your signature is forged, as a
12 notary, can you testify that the Trevinos signed this
13 document?" He said no. He even went and said, even if it is
14 his signature -- and you'll see some documents where he says,
15 "Yeah, I notarized that document." Even when he signed his own
16 name, he's going to say, "I can't tell you whether or not that
17 individual signed the document." Well, wait a minute; you're a
18 notary. He says, "Well, I didn't know, as a notary, that I was
19 supposed to actually witness someone signing the document."

20 So, for years -- for years -- he was notarizing
21 signatures he never saw; they were forging his signature
22 throughout the store; and this -- that -- is why this company
23 released hundreds -- hundreds -- of deeds of trust; hundreds of
24 these mechanic lien contract.

25 Now, you may ask yourself: How can this happen? How

1 in the world can this happen? How can they forge deeds of
2 trust? How can they forge mechanic lien contract with a forged
3 notary? How can that get filed in our --

4 **THE COURT:** Could you get to the podium, please, by
5 the microphone?

6 **MR. RUMLEY:** How can that get filed in the county
7 records? It's real easy. All you do is you take the document,
8 you pay a filing fee, and it's recorded. It's as easy as that.

9 How could it happen with this company? Well, they
10 mentioned there's Clayton Homes, Inc. That is the parent
11 company. And it's a one-stop shop. They manufacture the home,
12 they sell the home, they finance the home, they insure the
13 home. Vanderbilt is owned by Clayton Homes, Inc. And what the
14 evidence is going to show, when you own your own bank -- when
15 you own your own bank -- you get to create the rules. Right?
16 You get to create the rules.

17 So, what rules did they create? You didn't have to
18 close at a title company. No title company. Your sales
19 associates could close the transaction, even though they
20 enjoyed a financial interest in the transaction. They could
21 notarize it even though they enjoyed a financial interest in
22 the transaction.

23 Vanderbilt -- Vanderbilt -- and you'll hear from
24 Mr. Nichols right here. He'll testify. He admitted that the
25 only thing within this company that was in place to prevent

1 their salespeople from forging landowners' signatures is their
2 own notaries. Is their own notaries. He'll admit that, but
3 guess what? This company had no policies in place for
4 notaries. They knew their employees were notaries; they paid
5 for them to become notaries; but they had no policies. And
6 Mr. Rangel did say that they created new policies. Yeah, they
7 created them after they got caught. After they got caught.

8 You ask yourself why. Why would they do it? This is
9 why they would do it. Sales associates were paid on a
10 commission. They were paid a draw, which means that if they
11 weren't selling homes, they became in debt to the company.
12 And, so, it was sell, sell, sell. You had sales associates
13 getting up to 26 percent of the gross profit of the sale. You
14 had the store manager getting 50 percent of the gross profit of
15 the sale. The sales associate, the store managers, the people
16 charged with verifying signatures; it was a sell, sell, sell.

17 CMH; what did they get out of it? They wanted to
18 sell homes. They wanted to sell homes. Vanderbilt; what did
19 Vanderbilt -- why would Vanderbilt do this? Well -- and this
20 was brought up a little while ago. Vanderbilt is the bank. It
21 is the mortgage company. But guess what? They don't have
22 money. What they do is they pool all these loans together and
23 they go sell them to investors. Investors pay them money.
24 They use that money and they reinvest it and do it again.
25 That's how they make their money.

1 And what they figured out is, is that if you're going
2 to sell a loan to an investor, if you're going to take an
3 investment in a loan, you're going to pay more money for a loan
4 for a manufactured home that has wheels that could be moved
5 like a vehicle -- you're going to pay more money for that loan
6 if it's backed by real property. If it's backed by real
7 property, you're going to pay more money. That's why
8 Vanderbilt had these relaxed lending standards, because they
9 knew they could get more money by selling these land-in-lieu
10 loans.

11 Now, in this case my clients' signatures were forged.
12 And you're going to hear -- you're going to hear from my
13 clients, and they're both going to say their signatures were
14 forged. You're going to hear from Ben Frazier. You're also
15 going to hear from Janet Masson, who is a handwriting expert
16 from here in Houston. And she's going to testify that she
17 compared the signatures and the signatures on the deed of trust
18 and mechanic's lien contract are not their signatures.

19 You're also going to hear from a fellow named Larry
20 Stewart. And Larry Stewart is going to come all the way from
21 California. Mr. Stewart is their handwriting expert. They
22 found Mr. Stewart through an expert service that puts lawyers
23 and experts together. And listen carefully when Mr. Stewart
24 testifies, because they look at the signatures and they look
25 and all this stuff, and Mr. Stewart agrees with the differences

1 found on the Trevino signatures on the deed of trust and the
2 mechanic's lien. He agrees that there's differences from their
3 genuine signatures. He just comes up with a different opinion.
4 He just comes up with a different opinion.

5 And when you're judging his credibility, one of the
6 things, ask yourself -- just ask yourself -- this company has
7 paid Larry Stewart more than \$125,000 just in this case.
8 Hundred and twenty-five thousand dollars. A hundred and
9 twenty-five thousand dollars for him to come and look at two
10 signatures and come up with the opinion and come testify. And
11 guess what? He just started working at the end of June.
12 Perhaps if this company had notary practices, if they had a
13 notary that was following the law, they wouldn't have to spend
14 \$125,000 on an expert.

15 The statute that my clients are suing under is the
16 fraudulent lien statute. And what it says is that a company or
17 a person or a party cannot file a fraudulent lien, in a
18 nutshell. And we -- our allegations against them are that the
19 deed of trust and the mechanic's lien contract are fraudulent
20 documents and that they filed these fraudulent documents to
21 record a fraudulent lien. And we believe the evidence is that
22 these documents are fraudulent for two reasons: One, the
23 signatures of my clients were forged; and, number two, the
24 notary was forged. The documents were fraudulently notarized.

25 You'll see testimony from Mr. Frazier, who says, "My

1 signature was forged." Those documents -- and I think that's
2 why we didn't hear anything. I don't think there is any
3 dispute that those documents are fraudulently notarized.
4 Mr. Frazier is going to tell you that. I asked him who forged
5 them. You're going to hear from a guy named Robin Moore. He's
6 a sales associate. You're going to hear from a guy named
7 Kimball. Both of those sales associates will testify that they
8 impersonated Frazier as a notary -- even though they're not
9 notaries -- that they impersonated him and forged his
10 signature. They'll admit to it. They'll admit to it. These
11 were the practices that were in place at this company that led
12 them to file these mass releases.

13 And the important thing, when you're looking at the
14 statute and the questions that the Court will submit at the end
15 of the case, is -- relates to -- and this is one thing they
16 didn't talk about, but it's one thing that I'm sure you're
17 going to hear probably this afternoon, is this idea of no harm,
18 no foul. No harm, no foul. Yeah, we had bad notary practices;
19 yeah, our notary signatures were forged; yeah, there may have
20 been some landowner signatures were forged; but we released
21 them. We released the liens. No harm, no foul. That's the
22 only way they can defend the conduct of their employees.

23 And what the fraudulent lien statute does is it
24 actually combats this "no harm, no foul." It combats exactly
25 what they're going to try to do. And the important thing is

1 the statute does not say, does not require, that damages be
2 proved. What it causes is to look at what the defendants
3 intended when they filed the documents. And that's very
4 important. Did these defendants intend to cause my clients
5 harm when they filed the fraudulent documents? That is the
6 question you're going to be asked.

7 And very quickly -- and I think they'll -- they'll --
8 they -- he agreed --

9 **THE CLERK:** Five minutes.

10 **MR. RUMLEY:** -- my clients did not sign the retail
11 installment contract. They're not obligated to pay on the
12 contract. Yet the documents, the very documents that they
13 filed, the fraudulent documents they filed, if you see, Maria
14 Trevino, hereinafter called "grantor," and it comes down and it
15 says \$40,000; the installment contract is made in trust to
16 secure payment of one retail installment contract, \$40,000,
17 executed by grantors. My clients didn't sign the installment
18 contract. They agree with that. If we look at the mechanic's
19 lien contract, it has my clients listed as the owner. If you
20 come down here, it says owner agrees to pay contractor \$40,000.

21 These documents themselves, the fraudulent documents
22 themselves, establish their intent. They intended, when they
23 forged these documents and they filed these fraudulent notary
24 documents, when they filed them with the court, they intended
25 to cause my clients harm. They intended to obligate them to

1 pay for the note or lose their land. But not only did they
2 intend that when they did that, what they did is they took this
3 loan and they sold it to investors. This loan was sold to an
4 investor. And when they sold it to the investor, they wanted
5 the investor to believe that it was backed by real property.
6 Why? Because they got more money for it. They got more money
7 for it.

8 At the end of this case -- and Mr. Rangel mentioned
9 it, about common sense. Common sense. And one of the things
10 that the Court's not going to instruct you on is -- is you're
11 going to set aside your biases, your prejudice, but not your
12 common sense. You don't have to check your common sense at the
13 courthouse desk.

14 And when you're looking at this evidence, ask
15 yourself: If there wasn't fraud and forgery, if it wasn't
16 rampant, why do they now close at a title company? They now
17 make them close at a title company. If there wasn't fraud and
18 forgery and it wasn't rampant, why do they now have policies
19 and procedures? If fraud and forgery wasn't rampant, why do
20 they no longer have this land-in-lieu program? No more. If
21 you're going to give your land up as collateral, guess what?
22 You're going to sign the contract. That's what we should do.

23 The bottom line is, is that this company has come
24 in -- and you'll see evidence; and this is the common sense.
25 Why would this company spend over \$150,000 on experts in this

1 case to foreclose on a \$20,000 debt? It's the no harm, no
2 foul. They're coming and they're looking for a jury verdict;
3 hey, we did it; no harm, no foul. And that's why we're asking
4 for punitive damages in this case. We want you to hear the
5 evidence, learn of the conduct of this company, that they come
6 into Corpus Christi, they commit these acts, they close their
7 store and they pull out, and now they want to come in and get a
8 verdict that says no harm, no foul.

9 We would ask at the end of the evidence -- at the end
10 of the evidence, you find that this company committed fraud,
11 that they've caused damages. We would ask that you award a
12 punitive damage award that tells them: This is wrong. There
13 is no such thing as no harm, no foul. This is wrong. Don't do
14 it again.

15 Thank you.

16 **THE COURT:** Thank you.

17 I think it's time for a lunch break now. I wanted to
18 get the opening arguments in. And what happens now is that
19 each party will put on their evidence, and then we'll have
20 closing arguments, and then you can deliberate. But that's six
21 days down the road. So, we should have about six days' worth
22 of evidence. And we're going to break for lunch till about
23 1:40; and I'll see you back here then. Would you please
24 remember my instructions; and everyone stand for the jury.

25 And escort them out through the door, please,

1 Mr. Castillo.

2 THE MARSHAL: All rise.

3 (The jury exited the courtroom at 12:28 p.m.)

4 (Outside the presence of the jury)

5 THE COURT: Thank you. You may be seated.

6 Anything to take up outside the presence of the jury?

7 MR. B. GUTIERREZ: None from us, your Honor.

8 MR. UNIDENTIFIED: Nothing.

9 MR. LOCHRIDGE: I just have one small matter, Judge.

10 THE COURT: Yes, sir.

11 MR. LOCHRIDGE: This doesn't need to be on the
12 record.

13 THE COURT: Okay. Off the record.

14 (Off the record at 12:29:13 p.m.; On the record at
15 12:29:58 p.m.)

16 THE COURT: If you all could come back about 1:35,
17 please. And preliminary about the proposed charge; what do you
18 think?

19 MR. UNIDENTIFIED: Mr. Soltero?

20 MR. LOCHRIDGE: Mr. Soltero is --

21 THE COURT: Nobody has read it? Okay. Never mind.

22 MR. LOCHRIDGE: He's ready for the charge.

23 MR. UNIDENTIFIED: We've read it.

24 MR. SOLTERO: We've read it, Judge. There's going to
25 be a number of issues we're going to have to take up.

1 **THE COURT:** Do you all think you can maybe work
2 together on this and --

3 **MR. SOLTERO:** We'll do that. But we're still going
4 to have a lot of additional things --

5 **THE COURT:** Such as?

6 **MR. SOLTERO:** Well, such as, Judge, on -- again, it
7 depends what goes to the jury. I mean, the RICO is a big part
8 of it, and the punitive damages. That's a whole lot of them.
9 But first is proximate cause is not correctly defined. That's
10 just, like, one thing that comes to mind immediately. There
11 are additional instructions that are -- some that are non-
12 pattern that we believe are appropriate. Duty to read; when
13 you are charged with documents, and that you read what the
14 contents of documents. I think there's other issues. But I
15 can get with Mr. (indiscernible).

16 **THE COURT:** That's fine.

17 **MR. SOLTERO:** And --

18 **THE COURT:** The problem is, did they sign the
19 documents? If you signed them, then you're charged with
20 reading them.

21 Oh, and Mr. (indiscernible), the reason I said, "That
22 didn't make any sense," is that many people would interpret
23 that if the Trevinos take the stand and say, "This is not my
24 signature," that's direct evidence, not circumstantial.

25 **MR. RUMLEY:** I understand.

1 **THE COURT:** And that was why it was confusing to me,
2 and probably to the jurors, who are much more skilled in law
3 than we are.

4 **MR. RUMLEY:** It sounded a lot better in my head, your
5 Honor.

6 **THE COURT:** It did. It did. As do those wonderful
7 tunes.

8 Anything else?

9 **MR. J. GUTIERREZ:** Yes.

10 **THE COURT:** All right. Thank you.

11 **MR. J. GUTIERREZ:** I had one --

12 **THE COURT:** Yes, sir.

13 **MR. J. GUTIERREZ:** -- one point on the charge, your
14 Honor. That is that the question -- the first question is
15 whether or not there is an assignment, and Flores and King
16 believe that there has been no assignment --

17 **THE COURT:** Okay.

18 **MR. J. GUTIERREZ:** -- then it can't be foreclosed on.

19 **THE COURT:** Okay. So, you all just do your own --
20 you know, use that as a thing, you know, sort of a framework,
21 and tell me what the right instructions are for proximate
22 cause, et cetera. Okay?

23 **MR. B. GUTIERREZ:** Yes, your Honor.

24 **THE COURT:** And was there or was not an assignment,
25 and, if so, go to -- skip to question such-and-such.

1 **MR. B. GUTIERREZ:** Yes, your Honor.

2 **THE COURT:** All right. Thank you all.

3 **MR. UNIDENTIFIED:** Thank you.

4 **THE COURT:** But try to work it out together.

5 **MR. B. GUTIERREZ:** We will, Judge. We'll get
6 together tonight. We were thinking of getting together this
7 evening, your Honor, visiting with Mr. Soltero.

8 **THE COURT:** That would be wonderful.

9 **MR. B. GUTIERREZ:** Yes.

10 **THE COURT:** Just wonderful.

11 **MR. B. GUTIERREZ:** We'll work on it.

12 **THE COURT:** Thank you.

13 **(A recess was taken from 12:32 p.m. to 1:38 p.m.)**

14 **(Outside the presence of the jury)**

15 **THE COURT:** You may be seated. Anything to take up
16 outside the presence of the jury?

17 **MR. B. GUTIERREZ:** No, your Honor.

18 **THE COURT:** You may be seated. Is the jury out here?

19 **THE MARSHAL:** Yes, your Honor.

20 **THE COURT:** Could you bring them in, please?

21 **THE MARSHAL:** Yes, your Honor.

22 **(Pause)**

23 All rise for the jury.

24 **(Jurors enter courtroom at 1:41 p.m.)**

25 **THE COURT:** Thank you. You may be seated.

Flores - Direct / By Mr. Rangel

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1 Call your first witness, please.

2 **MR. RANGEL:** Your Honor, we would call Cesar Flores.

3 **THE COURT:** Would you administer the oath, please?

4 **THE CLERK:** Yes, your Honor.

5 Please raise your right hand.

6 **CESAR FLORES, PLAINTIFFS' WITNESS, SWORN**

7 Thank you. Would you please be seated.

8 **MR. RANGEL:** May I proceed, your Honor?

9 **THE COURT:** You may proceed. Thank you.

10 **DIRECT EXAMINATION**

11 **BY MR. RANGEL:**

12 Q Mr. Flores, please state your full name.

13 A Cesar Flores.

14 Q And where do you live, Mr. Flores?

15 A I live in Alice, Texas.

16 Q And what address is that?

17 A I'm currently at 1706 Carmen Street.

18 Q And you are the same Cesar Flores who along with Alvin
19 King purchased a mobile home from --

20 **(Voices heard off the record)**

21 **THE COURT:** Could you move closer? Just lean your
22 right arm onto the -- yes, and then that puts you right into
23 the microphone, sir.

24 **THE WITNESS:** Thank you.

25 **THE COURT:** Thank you.

1 **BY MR. RANGEL:**

2 Q And you are the same Cesar Flores who along with Alvin
3 King purchased a mobile home back in January of 2002 from
4 CMH Homes; is that correct?

5 A Yes, sir.

6 Q Okay. And Maria Trevino is your sister, correct?

7 A Correct.

8 Q And Arturo Trevino is your brother-in-law.

9 A Correct.

10 Q And Andrea Flores is your mother?

11 A Yes, sir.

12 Q And Heberto (phonetic) Flores, Jr. is your brother.

13 A Yes, sir.

14 Q Now, where does your brother live?

15 A He currently lives at 1702 Carmen Street in Alice.

16 Q And where does your mother live?

17 A At 1706 Carmen Street in Alice.

18 Q Okay. So you are living with your mother right now.

19 A I am currently staying with her right now.

20 Q And the house where your brother Heberto lives is next
21 door to the lot where the mobile home is located, correct?

22 A Correct.

23 Q And the mobile home is located at Lot 36.

24 A Yes, sir.

25 Q Okay. Now, Mr. Flores, do you understand that this is a

1 lawsuit to repossess that mobile home?

2 A I do.

3 Q Okay. And it is true, is it not, Mr. Flores, that back on
4 January 5th, 2002, you signed a contract to purchase that
5 mobile home?

6 A Yes, I did.

7 Q And that contract is CP 1, which I would call up at this
8 time.

9 (Pause)

10 And do you recognize this to be the contract,
11 Mr. Flores?

12 A Yes, I do.

13 Q And the contract at the top states that you and Alvin King
14 are the buyers, correct?

15 A Correct.

16 Q And then at the time that you purchased the mobile home
17 the address that you gave CMH Homes was 1702 Carmen, correct?

18 A That's what's on the application. I don't recall giving
19 that address.

20 Q Is that where you were living at the time?

21 A I was living at the time there, yes.

22 Q But that is the address that is on the contract.

23 A Correct.

24 Q And right above your name do you see where it says
25 "assignee"?

1 A Yes, I do.

2 Q And on the face of this contract it says that the assignee
3 is Vanderbilt Mortgage and Finance, Inc., correct?

4 A Correct.

5 Q Now, let's go to the page where your signature is. I
6 believe it's on Page 4.

7 That is your signature, correct?

8 A Yes, sir.

9 Q You signed this contract, correct?

10 A Yes, sir.

11 Q And Mr. King also signed the contract, correct?

12 A I believe he did.

13 Q And I think your signature also appears on Page 2.

14 **(Pause)**

15 That is your signature, correct?

16 A Yes, sir.

17 Q And that is Mr. King's signature, correct?

18 A I believe it is.

19 Q Now, this contract, Mr. Flores, did not require that your
20 signatures on the contract be notarized, correct?

21 A No, it did not.

22 Q Now, going to the first page again, the first paragraph,
23 if you'll read with me the second sentence:

24 "The seller will submit this contract to Vanderbilt
25 Mortgage and Finance, Inc., P.O. Box 9800, Maryville,

1 Tennessee; and if approved, the contract will be
2 assigned to Vanderbilt Mortgage and Finance, Inc."
3 Correct?

4 A Yes, sir.

5 Q That was in the contract that you signed, correct?

6 A It's on there, yes, sir.

7 Q Okay. Now, before you signed the contract you knew the
8 amount of your obligation to Vanderbilt, correct?

9 A Can you -- before I signed the contract I knew the
10 amount --

11 Q You knew that you had to make 144 monthly payments,
12 correct?

13 A Yes. That day they showed that to me.

14 Q And you knew that the payments were going to be about
15 \$500 each. If you look further in the contract, each of the
16 payments was going to be \$511.40, correct?

17 A Yes.

18 Q And the first payment was due, if you look over to the
19 right, on March 1st, 2002, correct?

20 A Correct.

21 Q As of today, Mr. Flores, you have not made the 144
22 payments have you?

23 A They have not been made, no.

24 Q At some point you stopped making the payments, correct?

25 A Correct.

1 Q And that coincided with when Mr. King moved out, correct?

2 A It was about that time, yes, sir.

3 Q And Mr. King moved out in March-April of 2009, correct?

4 A It was around that time, yes, sir.

5 Q And so because you have not made the 144 payments you have
6 not paid the full amount that was owed under the contract,
7 correct?

8 A Correct.

9 Q In other words, you have not paid the contract in full,
10 correct?

11 A Correct.

12 Q You still owe payments under the contract, correct?

13 A I don't believe I do.

14 Q And the reason you do not believe you do is because you
15 believe that those documents that we talked about earlier
16 released your obligation, correct?

17 A Correct.

18 Q And if you're mistaken about that, you still owe the
19 money, correct?

20 A Correct.

21 Q Now, let's go back to December of 2001. It was late
22 December when you and Mr. King decided that you wanted to buy a
23 mobile home together, correct?

24 A Not necessarily so. In late December, I came to a point
25 in my life where I knew that I wanted to move out of where I

1 was living with my mother. Whether I was going to buy a mobile
2 home or not was not decided on at that time.

3 Q But it was in late December that you and Mr. King went to
4 the CMH Homes retail sales store in Corpus Christi, correct?

5 A Yes, sir.

6 Q And you had had some discussions with Mr. King about
7 possibly buying a home, whether it was a mobile home or a home
8 where you all could live together, correct?

9 A Well, we had talked about just moving out. So it was
10 either buying, renting. We were looking at all of our options
11 at that time.

12 Q And one of the options was to buy a mobile home, correct?

13 A That it could become available, yes.

14 Q In fact, one day in December you all were driving around
15 Corpus Christi and you saw the CMH Homes retail sales store and
16 you stopped.

17 A Correct.

18 Q And you stopped to look at the homes there, correct?

19 A Yes, sir.

20 Q Now, before you went to Corpus Christi that day and looked
21 at the mobile home you had not had any prior discussions with
22 your mom or with your sister Maria about buying a mobile home,
23 correct?

24 A No, sir.

25 Q Is that correct?

1 A Yes, sir.

2 Q And when you went to the sales center that day you and
3 Mr. King walked around the lot, correct?

4 A Correct.

5 Q And as you walked through you identified a couple of homes
6 that perhaps you were interested in, correct?

7 A As we were walking around we were just looking at all of
8 the homes. We hadn't identified two particular ones at that
9 point.

10 Q At some point during that first visit did you identify one
11 or two of the homes that perhaps you were interested in?

12 A We were shown two homes that we became interested in; so,
13 yes.

14 Q And, in fact, one of those two homes ended up being the
15 one that you purchased, correct?

16 A Correct.

17 Q So you had a discussion with a sales representative there
18 at the sales store about buying a mobile home, correct?

19 A Correct.

20 Q And you don't recall the specifics of that conversation,
21 correct?

22 A No, I don't.

23 Q After that first visit had you made up your mind that you
24 liked one of those two homes?

25 A Yes, sir.

1 Q And you still were not prepared to commit to buy one of
2 the homes during that first visit, correct?

3 A Correct.

4 Q You asked some questions about how much -- about how much
5 your monthly payments were going to be, correct?

6 A I don't remember that I asked that question that day. I
7 think I might have.

8 Q Certainly that was one of the things you were interested
9 in before you knew -- you had to know how much you were going
10 to pay --

11 A Sure.

12 Q -- to see whether you could afford it, correct?

13 A Correct.

14 Q Now, during that first visit did you have any discussions
15 with the sales representative about this land-in-lieu program?

16 A During that meeting, that first meeting?

17 Q Yes, sir.

18 A I really don't remember the specific conversation. I know
19 that land-in-lieu was never used in that conversation. It was
20 more like if we had a place or a piece of property to put the
21 trailer, we could get approved and have the trailer put there.

22 Q I mean was it your understanding -- I mean did the
23 question of making a down payment come up?

24 (Pause)

25 A I'm sure it did. I just don't remember.

1 Q And on that day you were not prepared to make a down
2 payment on the purchase of a mobile home, correct?

3 A It hadn't really been a goal of mine at that point; so,
4 no, I was not prepared.

5 Q Okay. And you didn't have any savings at the time did
6 you?

7 A I did not have a savings account, no, sir.

8 Q Okay. And when you left the store, the sales center, that
9 day did you have an understanding as to whether or not you
10 would have to come up with a down payment?

11 A The understanding that I had was if we had a piece of
12 property, we could put the manufactured home on there and we
13 would not have to give a down payment in regards to money.

14 Q Okay. And certainly, Mr. Flores, you would agree with me
15 that every mobile home that's purchased has to be on a piece of
16 property.

17 A Correct.

18 Q And your understanding of the conversation is that so long
19 as you could identify a piece of property to place that mobile
20 home on you wouldn't have to make a down payment, correct?

21 A Correct.

22 Q And certainly I guess that would apply to every sale of a
23 mobile home, no down payment would be required if the buyer
24 just had a place to put it, correct?

25 A Can you rephrase that again for me?

1 Q Yes. I mean if what you say is correct, that so long as
2 you have a piece of property on which to place the mobile home,
3 no down payment would be required. That would mean that every
4 purchaser of a mobile home that has a place to put a mobile
5 home would not have to make a down payment, correct?

6 A I can't speak for every other trailer, but I can speak for
7 mine.

8 Q And so your understanding in terms of your situation is
9 that so long as you had a place to put the mobile home on, you
10 would not have to make a down payment, correct?

11 A Correct.

12 Q During that first visit did you have a discussion with the
13 salesman about land being used as collateral or additional
14 security in the purchase of the mobile home?

15 A No, sir.

16 Q And there was absolutely no discussion about that.

17 A The only discussion that I can remember is that we were
18 told if we had a place to put the manufactured home or the
19 mobile home we would basically be approved. I don't remember
20 details as far as what the conversation consisted of.

21 Q And you would be approved to buy it without having to make
22 a down payment, correct?

23 A Correct.

24 Q Okay. Now, before you went to the sales center that day
25 you knew that your sister Maria and her husband Arturo owned

1 Lots 35 and 36 there in Alice, correct?

2 A Before I went?

3 Q Yes.

4 A I did not know.

5 Q When did you first find out that your sister owned Lots 35
6 and 36?

7 A Well, I had an idea that it was theirs. I just at that
8 point hadn't really asked questions or really even bothered, so
9 I wasn't 100 percent certain that it was theirs. So it wasn't
10 until after our initial meeting at Clayton Homes that I went
11 home and spoke to my sister and her husband in regards to what
12 was said that it became -- I was sure that that property was
13 theirs.

14 Q So after you came back from Corpus Christi and went to
15 Alice and you went and spoke with your sister Maria, she
16 confirmed to you that she and Arturo, her husband, Mr. Trevino,
17 in fact, owned Lots 35 and 36, correct?

18 A Yes, sir.

19 Q And you were living at 1702 Carmen, correct?

20 A Correct.

21 Q And 1702 Carmen was parked on one of those lots, correct?

22 A Correct.

23 Q Lot 35.

24 A Yes, sir.

25 Q Okay. So you returned and then you contact your sister

1 and for the first time discuss with her the fact that you're
2 thinking of buying a mobile home, correct?

3 A Yes. I saw the lot. I spoke -- after that initial
4 meeting, you know, I spoke to her and mentioned -- might have
5 mentioned even to my mom, and that's how it all came about.

6 Q I mean and this lot had been vacant for some time next to
7 where you lived with your mother, 1702 Carmen.

8 A Correct.

9 Q And are you telling this jury that you had no idea or no
10 understanding that that lot, that vacant Lot 36 next to your
11 mom's home, belonged to Maria and Arturo Trevino?

12 **MR. B. GUTIERREZ:** Objection, your Honor. That has
13 not been the testimony of Mr. Flores.

14 **MR. RANGEL:** Judge, he has answered that question.
15 Judge, I get to ask him questions.

16 **THE COURT:** Go ahead.

17 **BY MR. RANGEL:**

18 Q Is it your testimony, Mr. Flores, that all the time that
19 you had lived with your mother at 1702 -- how long was that?

20 A I don't recall. I mean the house was built when I was
21 young, and I lived there growing up.

22 Q Ten, 15 years?

23 A Probably longer than that. About -- I don't know when the
24 house was built. But there at 1702 Carmen Street when I was
25 born there was an older home there, and then my father built

1 the newer home. So I've been there pretty much all my life.

2 Q Okay. And all your life there living at 1702 Carmen you
3 knew that there was a vacant lot next to the house, correct?

4 A Well, the way that the property is set up is all three
5 lots are fenced in together. It's not fenced away from the
6 other two lots. So growing up it was never -- I was never
7 concerned with who that belonged to, because to me it was --
8 they're all fenced in together. So it all seemed like one big
9 lot to me.

10 Q Okay. So you had no knowledge that that lot next to
11 1702 Carmen belonged to Maria and Arturo Trevino.

12 A Growing up or -- I mean I eventually had -- you know, I
13 became aware of it; you know, I had an idea but I wasn't sure.

14 Q Okay. When did you become aware of it?

15 A I became aware of it when I became interested in trying to
16 get the manufactured home.

17 Q So the first time you became aware that Lot 36 was owned
18 by your sister and her husband was in December of 2002?

19 A Without a --

20 Q I'm sorry, 2001.

21 A Without a doubt that it was theirs around that time. But
22 like I said, I had an idea. I wasn't really worried about who
23 it belonged to at that time.

24 Q Well, when you came back to Corpus Christi you contacted
25 your sister, correct?

1 A Correct.

2 Q And the reason you contacted your sister is that you were
3 looking for a place to put the mobile home on, correct?

4 A Yes, sir.

5 Q And certainly at the time you contacted your sister you
6 had some understanding that --

7 A Yes.

8 Q -- she owned the lot; otherwise, why have a conversation
9 with her, correct?

10 A Yes, sir.

11 Q Okay. And so you contacted your sister. And did you have
12 a meeting with her and her husband, Mr. Trevino?

13 A I went over to where they were living at the time and
14 spoke to them briefly about it.

15 Q And at the time they were living in Premont, correct?

16 A Yes, sir.

17 Q And so your testimony is that the first time you discussed
18 with your sister and Mr. Trevino the fact that you were looking
19 at buying a mobile home and that you wanted to place it on that
20 empty lot next to where you lived was after you returned from
21 Corpus Christi, after that first visit, correct?

22 A Correct.

23 Q Okay. So did you tell your sister if I can find a place
24 to locate the mobile home I will not have to make a down
25 payment?

1 A Something to that degree, yes, sir.

2 Q And you told her -- you asked her whether you could have
3 her permission and Mr. Trevino's permission to place the mobile
4 home on that lot, correct?

5 A Yes. Yes, sir.

6 Q And both of them agreed.

7 A Yes, sir.

8 Q Okay. And so after you got that information, did you
9 report back to Mr. King?

10 A Yes, sir.

11 Q And you told him that you had spoken with your sister and
12 that she and her husband had given you permission to place the
13 home on that lot, correct?

14 A Yes, sir.

15 Q And did you then have some contact with the salesman at
16 the sales center about that?

17 A I believe I did.

18 Q One of the open issues when you left after the first visit
19 was that you had to find a place to put it, right?

20 A Correct.

21 Q And once you confirmed that you did, you called the
22 salesman and told him: I have found a piece of property so I'm
23 ready to have some more discussions.

24 A I believe I did.

25 Q And, in fact, on January 5th, you went back to the sales

1 center and that's when you signed the contract that we saw on
2 the screen a few minutes ago, correct?

3 A I believe so.

4 Q And there were a number of documents that you signed there
5 that day, correct?

6 A Yes, sir.

7 Q And, in fact, you did not have to make a down payment,
8 correct?

9 A Correct.

10 Q And did you even ask as to whether or not you had to make
11 a down payment?

12 A I believe I was just notified, so I didn't -- I don't
13 believe or remember asking.

14 Q Okay. And you told the salesman that you had the property
15 or the location where the mobile home was going to be placed.

16 A I'm sorry?

17 Q You told the salesman that the mobile home was going to be
18 placed on this lot that is next to where I live, 1702 Carmen,
19 correct?

20 A I believe at some point I did.

21 Q Okay. During that second visit, which was on January 5th,
22 2002, did you at any time discuss with the salesman the land-
23 in-lieu program?

24 A No, sir.

25 Q And your testimony is that there was no discussion during

1 the first meeting and no discussion during the second meeting,
2 correct?

3 A Correct. I don't remember land-in-lieu ever being
4 mentioned or used in regards to the conversation.

5 Q And the only discussion that you recall regarding the down
6 payment was if you found a piece of property where to place it,
7 you would not have to make a down payment, correct?

8 A Correct.

9 Q Now, at the time -- I guess late December or early -- late
10 December 2001 or early January 2002 when you all were looking
11 at the mobile home you were living in Alice, correct?

12 A Yes, sir.

13 Q And in connection with the purchase of the mobile home you
14 had to fill out a credit application, correct?

15 A Yes, sir.

16 Q And, in fact, you and Mr. King filled out a credit
17 application, correct?

18 A Yes, sir.

19 Q And you submitted that credit application to CMH Homes,
20 correct?

21 A Yes, sir.

22 Q Because I mean you were not going to pay cash for it,
23 right?

24 A Right.

25 Q You knew that you had to finance it, correct?

1 A Correct.

2 Q Finance the purchase of the mobile home, correct?

3 A Yes, sir.

4 Q And you received a credit application at CMH Homes --

5 A No, sir.

6 Q -- during the first visit.

7 A No, sir.

8 Q When did you receive the credit application?

9 A I don't remember exactly when. After speaking with
10 Mr. King I believe it was either faxed or emailed to us. So I
11 did not leave that first initial visit with an application.

12 Q But certainly before you went for the second visit you
13 submitted a credit application.

14 A Yes, sir.

15 **MR. RANGEL:** I will call up CP Exhibit 9 at 72, 73.

16 Q Mr. Flores, is that the credit application that you and
17 Mr. King filled out?

18 A It appears to be, yes.

19 Q And the information on the left is your personal
20 information, correct?

21 A Correct.

22 Q Information on the right is Mr. King's.

23 A Correct.

24 Q And if you look at the very top, you see the fax
25 transmittal?

1 A Yes, sir.

2 Q And that was faxed from HEB Store 223 in Alice on
3 January 3rd, 2002 at 12:09, correct?

4 A Well, it has that information. It doesn't say where it
5 was faxed from or to. But it does have that information up
6 there.

7 Q I mean you're familiar with fax information in terms of
8 the source where --

9 A Sure.

10 Q And so just looking at that document, it appears that it
11 was faxed from HEB Store Number 223 in Alice on January 3rd,
12 2002 at 12:09, correct?

13 A Yes, sir.

14 Q Okay. And that fax, in fact, consisted of several pages.

15 **MR. RANGEL:** We'll call up 73.

16 Q And that's part of the fax, correct?

17 A Correct.

18 Q So the two pages of the fax at Pages 72 and 73 are the
19 credit application, right?

20 A Correct.

21 Q Okay. But there are two other pages to the fax.

22 **MR. RANGEL:** If we'll call up CP Exhibit 9 at 71
23 and 46.

24 Q And again, looking at the top, that was faxed from HEB 223
25 Alice, January 3rd, 2002 at 12:10, which is one minute after

1 the other one, correct?

2 A Correct.

3 Q And this part of the fax is a -- appears to be a warranty
4 deed, correct?

5 A Yes, sir.

6 Q And the deed is from David Cantu and Jesusa Cantu,
7 correct?

8 A Yes, sir.

9 Q And Jesusa Cantu was your sister, correct?

10 A Yes, sir.

11 Q And David Cantu was your brother-in-law.

12 A Yes, sir.

13 Q And, unfortunately, both of them are deceased.

14 A Yes, sir.

15 Q And if we look into the body of the deed, to whom is the
16 property that we'll get to in a minute being conveyed? Is it
17 being conveyed to Arturo Arnulfo (phonetic) Trevino and Maria
18 Margarita Trevino?

19 A Yes, sir.

20 Q And that is your sister, Maria Trevino, and your brother-
21 in-law, Arturo Trevino, who are sitting in this courtroom,
22 correct?

23 A Correct.

24 Q And if we'll look further down, the property that is being
25 conveyed, Lot 35 and 36, Block 1, Gallimore Additon.

1 Do you see how they spelled Additon? A-d-d-i-t-o-n?

2 A Okay. Yes, sir.

3 Q And that, in fact, Lot 36 is where the mobile home ended
4 up, correct?

5 A Yes, sir.

6 Q Okay. And the date I think, if we look further down, the
7 date on this is January 2nd, 2000 -- I believe that's 2001. Is
8 that what it looks like, Mr. Flores?

9 A Yes, sir.

10 Q Okay.

11 MR. RANGEL: So and let's look at CP 9 at 46. At 71.

12 (Pause)

13 Q Okay. This is the other page that goes with that warranty
14 deed, correct?

15 A Yes, sir.

16 Q And again, it's coming from HEB 223, Alice, January 3rd,
17 2002, at 12:11, correct?

18 A Yes, sir.

19 Q So this fax consisted of the credit application that you
20 and Mr. King filled out, correct?

21 A Yes, sir.

22 Q And a copy of the warranty deed conveying from the Cantus
23 to the Trevinos Lots 35 and 36, correct?

24 A Yes, sir.

25 Q And that fax consisting of four pages was faxed to

1 CMH Homes on January 3rd, 2002, correct?

2 A Yes, sir.

3 Q And did you fax that?

4 A No, sir.

5 Q Did anybody fax it at your instructions?

6 A Yes, sir.

7 Q Who faxed it?

8 A Alvin King.

9 Q Remember when I took your deposition and I asked you
10 whether you had anything to do with that fax?

11 A Yes, sir.

12 Q And you said that you did not know, correct?

13 A Yes, sir.

14 Q And you said you did not know who had, correct?

15 A Correct.

16 Q And then, in fact, I specifically asked you do you know
17 whether Mr. King did, and you said you couldn't say, correct?

18 A Correct.

19 Q But now your testimony is that Mr. King faxed it.

20 A Yes, sir. At the time that you asked me at the deposition
21 I did not remember, I could not remember. But after having a
22 little bit of time to speak with Mr. King, we have -- I've been
23 able to recall exactly what happened or what happened that day.

24 Q So it is your testimony now that the application was sent
25 to CMH Homes -- I'm sorry -- the fax was sent to CMH Homes by

1 Mr. King.

2 A Yes, sir.

3 Q And it was sent to CMH Homes in connection with the
4 discussions you were having with CMH Homes about buying the
5 mobile home.

6 A I would believe so.

7 Q Okay. And were you the one that gave to Mr. King a copy
8 of the deed from the Cantus to the Trevinos?

9 A To be honest, I don't remember. But I'm sure I did.

10 Q And from whom did you obtain a copy of that warranty deed?

11 A I would have obtained it from my sister and her husband,
12 Maria and Arturo.

13 Q Okay. And the reason you would have -- this was after you
14 had spoken to them about placing the mobile home on the lot,
15 correct?

16 A Correct.

17 Q And the reason that you had obtained it from your sister
18 and Mr. -- well, from your sister, Maria Trevino, is so that
19 you could fax it to CMH Homes along with your credit
20 application in connection with the discussions for the purchase
21 of the mobile home, correct?

22 A Yes, sir.

23 Q And so somebody from CMH Homes had told you, we need a
24 property description in connection with this purchase, correct?

25 A Again, I don't remember exactly, but I'm assuming that

1 they did.

2 Q Okay. And did the salesman at the lot tell you why that
3 he needed the property description?

4 A I wish I could remember but I don't. The only thing I can
5 remember is that they would need it so they had an idea of
6 where the trailer was going.

7 Q And it's still your testimony, Mr. Flores, even after
8 seeing this warranty deed that during those discussions with
9 the salesman at the sales center there was no discussion about
10 land-in-lieu of a down payment.

11 A No, sir.

12 Q Okay. And when they told you, somebody at the sales
13 center told you that they needed a property description, your
14 understanding was that the only reason they needed the property
15 description is so that they would know where the home was going
16 to be located?

17 A I would think so, sir, yes.

18 Q After you sent the -- after Mr. King sent the credit
19 application and the property description, you proceeded to go
20 to the sales center and execute the contract, correct?

21 A On January the 5th, yes, sir.

22 Q Okay. And the property description, it's Lot 35 and 36 of
23 Block 1, Gallimore Additon, correct?

24 A Yes, sir.

25 Q Okay.

1 **MR. RANGEL:** If we will pull up CP 1, first page.
2 Right there.

3 Q Buyer. You are the buyer, right?

4 A Yes, sir.

5 Q Gives seller a security interest in the goods or property
6 being purchased.

7 That was the mobile home, correct?

8 A Correct.

9 Q And then real property located at 3536 Gallimore, Alice,
10 Texas 78232, correct?

11 A Correct.

12 Q And the 35 and 36, that's very similar to the 35 and 36
13 that's on the warranty deed, correct?

14 A I don't know of a 3536 Gallimore, Alice, Texas address. I
15 have no idea where that's located.

16 Q But you do know of Lots 35, 36, Gallimore in Additon in
17 Alice, Texas, right?

18 A Addition. Yes, sir.

19 Q Okay. So in this contract that you signed you stated that
20 you were giving CMH Homes a security interest in real property,
21 correct?

22 A It seems that way, yes.

23 Q And again, there's an uncanny resemblance between what's
24 typed there, 3536 Gallimore, Alice, Texas, and the property
25 description in the warranty deed, correct?

1 A Correct.

2 Q Mr. Flores, is it still your testimony that you never knew
3 that that property was being used as collateral in connection
4 with the purchase of the mobile home until this lawsuit was
5 filed?

6 A Yes, sir. There's really no way that I could have given
7 permission for Lot 35 to be used since there's a home on there
8 already. So I did not know.

9 Q But there was no home on 36.

10 A No, sir, there wasn't.

11 Q Isn't what happened, Mr. Flores, is that when you went to
12 purchase the mobile home the salesman told you: Look, we have
13 this land-in-lieu program. If you can come up with some
14 property, give us a property description, get that property as
15 collateral, you won't have to make a down payment. Correct?

16 A No, sir.

17 Q And isn't it true that when you got that information, you
18 went and spoke with your sister; your sister said, sure; and
19 she gave you the property description; Mr. King sent the
20 property description so it could be incorporated into the
21 documents dealing with the real estate, correct?

22 A I got the information from my sister. I gave it to
23 Mr. King. He faxed it over to them. So they had a description
24 and the application of the property.

25 Q And before you signed this contract you had an opportunity

1 to read it, correct?

2 A I'm sure I did.

3 Q Okay. And when you got to this portion in the contract
4 which you signed, which says that "buyer gives seller a
5 security interest in real property" -- do you know what "real
6 property" is?

7 A Yes, sir.

8 Q What's "real property"?

9 A Real property is land.

10 Q Okay. So you were -- in the contract you agreed to give a
11 security interest in land located at 3536 Gallimore, Alice,
12 Texas, correct?

13 A That's what it says on there, yes, sir.

14 Q Well, you signed the contract.

15 A Yes.

16 Q When you got to that portion of the contract, did you ask
17 the salesman "what is this?"

18 A I didn't. I must have overlooked that. I didn't ever
19 realize that it was 3536 Gallimore.

20 Q Okay. But you agree that you are bound by every term of
21 that contract that you signed.

22 A To the best of my knowledge, yes.

23 Q So before you signed the contract you knew you could
24 afford it.

25 A I'm sorry?

1 Q Before you signed the contract you knew you could afford
2 it, could afford the purchase of the mobile home.

3 A Yes.

4 Q Okay. And you knew that if -- you knew you had to make
5 those payments.

6 A Yes, sir.

7 Q And you knew that if you did not make the payments, then
8 the home could be repossessed.

9 A Yes, sir.

10 Q In fact, that's in the contract, too.

11 A I believe so.

12 Q And the contract also provides that it would be assigned
13 to Vanderbilt, correct?

14 A I believe so.

15 Q Well, let's look. Let's pull up the language.

16 **(Pause)**

17 The second sentence. "Seller will submit this
18 contract to Vanderbilt Mortgage and Finance and if approved the
19 contract will be assigned to Vanderbilt Mortgage and Finance,"
20 correct?

21 A Yes, sir, that's what it says.

22 Q And, in fact, you were approved, right?

23 A Yes, sir.

24 Q You were approved because you starting making the payments
25 to Vanderbilt, correct?

1 A That's who we were sending our payments to, yes.

2 Q I mean every single payment that you made from March 2002
3 until April of 2009 went to Vanderbilt, correct?

4 A Correct.

5 Q You knew that that contract had been assigned to
6 Vanderbilt, correct?

7 A I did not know it had been assigned. We got a payment
8 book and just sent our payments to them.

9 Q Well, the contract said it was going to be assigned if you
10 were approved, right?

11 A Correct.

12 Q And it was approved, right?

13 A Yes, it was.

14 Q And so it was assigned to Vanderbilt, correct?

15 A According to the contract it was.

16 Q And during the time that you were making payments you
17 would have from time to time communications with people at
18 Vanderbilt, correct?

19 A No, sir. My communication with them was very -- I mean
20 almost non-existent. Mr. King was the one who --

21 Q Oh.

22 A -- communicated with them.

23 Q Mr. King was the person who spoke with the people at the
24 call center, correct?

25 A Yes, sir.

1 Q Whenever there were questions relating to the contract or
2 the obligations, Mr. King would make that call.

3 A I believe so, yes.

4 MR. RANGEL: Judge, may we approach on a limine
5 matter?

6 THE COURT: Yes, sir.

7 (Bench conference on the record begins at 2:22:10 p.m.)

8 THE COURT: (Indiscernible / static noise)

9 MR. RANGEL: Judge, there's a motion in limine which
10 the Court has granted, number five, filed by (indiscernible)
11 Trevino and I cannot ask any questions about payment history,
12 collection efforts, demand for payment, late payments or
13 anything to do with payment history of (indiscernible) prior to
14 October 8th, 2005. And I want to ask --

15 THE COURT: (Indiscernible / static noise)

16 MR. RANGEL: Well, this is a summary --

17 THE COURT: Oh, okay.

18 (Indiscernible / static noise / Pause)

19 MR. RUMLEY: It's number five, your Honor.

20 (Pause)

21 THE COURT: Okay. Your argument?

22 MR. RANGEL: Your Honor, they have -- several issues.
23 They have put into issue this question of assignment. And
24 obviously, if they were making all the payments and there were
25 issues along the way --

1 **THE COURT:** Thank you.

2 **(Bench conference ends at 2:24:59 p.m.)**

3 Take a 15-minute break.

4 **THE MARSHAL:** All rise for the jury.

5 **THE COURT:** Would you please stand for the jury?

6 **(Jurors exit courtroom at 2:25 p.m.)**

7 You can stand down, sir.

8 **(Witness steps down)**

9 Yes? Now we're here.

10 **MR. RANGEL:** Judge, this is relevant on a number of
11 points. They have injected the issue of --

12 **THE COURT:** Assignment.

13 **MR. RANGEL:** -- assignment. And our position is that
14 it was assigned. I think he's almost judicially admitted that
15 it was assigned, it was in the contract, and that the only
16 dealings they had were with Vanderbilt. Whenever there were
17 issues with respect to payment, whenever they needed something,
18 they would call Vanderbilt.

19 And this afternoon, your Honor, we are prepared to
20 bring a Vanderbilt representative who is going to testify about
21 the history of all those calls. And so I think the jury is
22 entitled -- we are entitled to put on that evidence to further
23 confirm that they knew. The Court, your Honor raised the issue
24 of notice. I mean they knew. They had notice that it was
25 assigned to Vanderbilt because they were dealing with

1 Vanderbilt throughout the payment history.

2 Secondly, your Honor, it goes to the issue of
3 credibility. The position that Mr. Flores and Mr. King have
4 taken in this litigation is that they had absolutely no
5 knowledge, no knowledge that the land had been pledged as
6 collateral. And we know, starting with the contract there, the
7 deed and all that.

8 But more importantly -- and again, we'll prove this
9 up this afternoon, your Honor -- there were calls made by
10 Mr. Flores and Mr. King at the call center inquiring as to
11 whether one of those lots could be released, could be released.
12 That shows that they had knowledge that the land had been
13 pledged, which is totally inconsistent with the position that
14 they're taking in this lawsuit.

15 **THE COURT:** Thank you. Your response?

16 **MR. B. GUTIERREZ:** Yes, your Honor. First of all,
17 prejudicial.

18 **THE COURT:** How is it prejudicial?

19 **MR. B. GUTIERREZ:** They're trying to --

20 **THE COURT:** I can see how it would be prejudicial
21 but -- okay, beyond that.

22 **MR. B. GUTIERREZ:** If I may approach the Court and
23 show you the documents that they're going to refer to.

24 **THE COURT:** It's right there.

25 **MR. B. GUTIERREZ:** Okay. The other objection, of

1 course, is --

2 **THE COURT:** What documents are you talking about?

3 **MR. B. GUTIERREZ:** These are collection notes that we
4 believe --

5 **THE COURT:** Okay. Well, put it on the overhead. And
6 what do you want to tell me about it?

7 **MR. B. GUTIERREZ:** That these come --

8 **THE COURT:** What are these --

9 **MR. B. GUTIERREZ:** These are notes that were prepared
10 by someone. We don't know who prepared them. The information
11 that is in this note is what Mr. Rangel wants to ask Mr. Flores
12 about. Clearly, hearsay. We don't know who prepared these
13 notes. They were produced by Vanderbilt Mortgage.

14 **THE COURT:** So these have not been admitted, these
15 documents?

16 **MR. RANGEL:** And I'm not going to -- your Honor, I'm
17 not going to ask specifically about this document. I just want
18 to lay the predicate --

19 **THE COURT:** Okay.

20 **MR. RANGEL:** -- because there's going to be --
21 Ms. Kim Russell will be here this afternoon to testify about
22 the call notes, to testify of the conversation she had with
23 Mr. King about these issues.

24 **THE COURT:** Well, is anybody going to testify that
25 Mr. Flores talked to them about releasing the lots?

1 **MR. RANGEL:** Well.

2 **MR. THAGARD:** Yes.

3 **THE COURT:** Your codefendants -- your cocounsel is
4 saying yes. Who is going to testify that they talked to
5 Mr. Flores?

6 **MR. THAGARD:** Kim Russell will testify to that call
7 note right there.

8 **THE COURT:** Okay. What I'm asking -- did she, Kim
9 Russell, talk to Mr. Flores?

10 **MR. THAGARD:** She talked to him on that day.

11 **THE COURT:** Okay.

12 **MR. RANGEL:** We can look at that note. When
13 counsel -- cocounsel is saying she talked to him that day,
14 let's look at what it says, your Honor.

15 **THE COURT:** I'm not interested in the document. I
16 want to know if there is going to be someone in who says I
17 talked to Mr. Flores on this day and this is what he said.

18 **MR. RANGEL:** Kim Russell is going to be here this
19 afternoon to talk about the history of calls that she had with
20 Mr. Flores and Mr. King.

21 **THE COURT:** As long as that's her own personal calls.

22 **MR. RANGEL:** Yes.

23 **THE COURT:** She took those calls from Mr. Flores.

24 **MR. RANGEL:** Yes.

25 **THE COURT:** I got it. I thought you were saying that

1 she was going to testify about records.

2 **MR. RANGEL:** Well, she's also going to testify -- I
3 mean this is a business record, your Honor. And we'll lay the
4 predicate as to how these are kept --

5 **THE COURT:** Okay.

6 **MR. RANGEL:** -- in business records --

7 **THE COURT:** Okay.

8 **MR. RANGEL:** But insofar as the motion in limine, I'm
9 not going to ask him about the call notes. I just want to be
10 able to get in -- ask him questions about the history of
11 communications with Vanderbilt.

12 **THE COURT:** Yes, yes. Go ahead. And the objection
13 is?

14 **MR. B. GUTIERREZ:** Hearsay.

15 **THE COURT:** From your client?

16 **MR. B. GUTIERREZ:** From the individual that he's
17 wanting to ask him about, some individual that is not here in
18 court, your Honor.

19 **THE COURT:** All right. Overruled. I think I've got
20 it.

21 Juror Number 1 needed a bathroom break, by the way,
22 which is why we're on a break. Now you can continue to enjoy
23 the rest of the break.

24 **MR. RANGEL:** Thank you, your Honor.

25 **(Pause)**

1 **MR. THAGARD:** Your Honor, when is our break over?

2 **THE COURT:** Pardon?

3 **MR. THAGARD:** When is our break over?

4 **THE COURT:** About 30 seconds.

5 **(Laughter)**

6 I don't remember when I sent everybody out for
7 15 minutes. Ms. Gano will know exactly.

8 **MR. UNIDENTIFIED:** Yes, your Honor.

9 **THE CLERK:** 2:25.

10 **THE COURT:** 2:25. So you have ten minutes.

11 We're off the record? I'm going to have to revisit
12 the deposition thing.

13 **MS. UNIDENTIFIED:** I'm on.

14 **THE COURT:** I have to revisit the deposition thing.
15 We're just going to have to do the -- because I don't know who
16 noticed when of whom when about what part of the depositions
17 that we're going to use. So I will go ahead and hear the
18 objections, laborious as it is, against my policy, against the
19 written orders of the Court, hear the objections as they come
20 up, okay? So just make sure when the objection is made that we
21 stop and hear it and I'll rule, okay? I don't want to keep the
22 depositions out and I don't want to give -- let people not have
23 their opportunity.

24 **MR. RUMLEY:** Your Honor, I saw over the break there
25 was an order striking the designations that were filed after

1 the pretrial. We don't have a problem with that.

2 **THE COURT:** I don't care about your -- just read in
3 what you want to read in or play in what you want to play in,
4 and I'll take the objections as they come up, for both sides.

5 **MS. RODRIGUEZ:** Your Honor, there may be some
6 overarching categories.

7 **THE COURT:** Don't ever do it again.

8 **MS. RODRIGUEZ:** Your Honor, there may be a --

9 **THE COURT:** You can laugh. It's okay.

10 **MS. RODRIGUEZ:** It's hard to know.

11 **THE COURT:** I know. Thank you.

12 **MS. RODRIGUEZ:** We'd actually agreed to work on this
13 this weekend. And, your Honor, there are some overarching
14 objections that if the Court takes up perhaps early in the
15 morning next week --

16 **THE COURT:** Overarching?

17 **MS. RODRIGUEZ:** That might address several of these
18 issues. For example --

19 **THE COURT:** Overarching?

20 **MS. RODRIGUEZ:** That would deal with more than one
21 witness, your Honor. For example, regarding who is actually
22 unavailable and, thus, is allowed to testify by deposition.
23 That would cover two or three witnesses without having to do a
24 line-by-line objection.

25 **THE COURT:** Okay. Tell me those.

1 **MS. RODRIGUEZ:** There are a couple of the so-called
2 other transaction witnesses, your Honor, who live in the area.
3 And Mr. Rumley had identified those by deposition or at some
4 point, I believe. They are clearly not --

5 **THE COURT:** Okay. Do you have a showing that they
6 are unavailable?

7 **MS. RODRIGUEZ:** No, your Honor.

8 **THE COURT:** Who does? Give me the names. Let's just
9 put the names on the record.

10 **MS. RODRIGUEZ:** I believe it's Anita Perez.

11 **(Voices heard off the record)**

12 **MR. SLEDGE:** Your Honor, there are seven other
13 transaction witnesses. Out of those seven only two of them we
14 understand, based on their deposition testimony, are outside
15 the subpoena range.

16 **THE COURT:** Are outside. Okay.

17 **MR. SLEDGE:** That's Guadalupe Rosenbaum and Ms. Lucia
18 Dusek.

19 **THE COURT:** Are outside the subpoena range.

20 **MR. SLEDGE:** Correct.

21 **THE COURT:** Okay. Who is inside the subpoena range?
22 Tell me.

23 **MR. SLEDGE:** Everybody else. All five that would --

24 **THE COURT:** You have to -- that doesn't help me.

25 **MR. SLEDGE:** Yes. Yes, your Honor.

1 **THE COURT:** This is a test.

2 **MR. SLEDGE:** That would be Anita Perez; that is one
3 of them. Veronica Rodriguez; that is another one. Alicia
4 Canales is another, and Ricardo Canales is the other, the last
5 one.

6 **THE COURT:** Four.

7 **MR. SLEDGE:** That's right, your Honor.

8 **THE COURT:** Are those -- do you have some evidence --

9 **MR. SLEDGE:** And pardon me. And Minerva Martinez.
10 I'm sorry.

11 **THE COURT:** Five.

12 **MR. SLEDGE:** Five.

13 **MR. UNIDENTIFIED:** We've -- excuse me; I'm sorry.

14 **THE COURT:** Are you intending to have those people
15 appear by deposition?

16 **MR. B. GUTIERREZ:** No, your Honor. The persons that
17 we plan to call by deposition would be Minerva Martinez; we
18 were planning to. Veronica --

19 **THE COURT:** Are those people out of the subpoena
20 range?

21 **MR. B. GUTIERREZ:** No, they're not, your Honor.

22 **THE COURT:** Then why -- but have you got evidence to
23 show their unavailability?

24 **MR. B. GUTIERREZ:** Well, my only statement to the
25 Court is that when we -- well.

1 **THE COURT:** Do you have evidence to show their
2 unavailability? This is a "yes" or a "no."

3 **MR. B. GUTIERREZ:** At this time I do not, your Honor.

4 **THE COURT:** Then you better get some.

5 **MR. B. GUTIERREZ:** Okay. I understand. I thought --

6 **THE COURT:** Get some subpoenas out.

7 **MR. B. GUTIERREZ:** Yes, your Honor.

8 **THE COURT:** Because they are objecting.

9 **MR. B. GUTIERREZ:** I understand. And the individuals
10 are, like I said for the record: Minerva Martinez, Veronica
11 Rodriguez --

12 **THE COURT:** Are you asking her help?

13 **MR. B. GUTIERREZ:** Well, I'm trying to remember the
14 other person. There's another person. I believe it was
15 just --

16 **(Voices heard off the record)**

17 Excuse me. Guadalupe Rosenbaum. We'll call him but
18 he's out of the subpoena range. The only two persons are
19 Minerva Martinez and Veronica Rodriguez.

20 **THE COURT:** Thank you.

21 **MR. B. GUTIERREZ:** I will get subpoenas and hope that
22 they can be available.

23 **THE COURT:** Thank you.

24 **MR. B. GUTIERREZ:** And if not I'll report to the
25 Court.

1 **THE COURT:** All right. Thank you.

2 Any other overarching problems?

3 **MS. RODRIGUEZ:** May I suggest, your Honor, if
4 feasible for the Court that on Monday morning we revisit some
5 of these issues after we meet over the weekend as suggested by
6 Mr. Rumley?

7 **THE COURT:** Yes.

8 **MS. RODRIGUEZ:** That might save some time.

9 **THE COURT:** Okay. I went back to the proximate cause
10 thing. That's the Fifth Circuit definition of "proximate
11 cause."

12 **MR. SOLTERO:** Your Honor, there's a Texas Supreme
13 Court case in 2007, *Ford Motor Company versus* (indiscernible),
14 and there's a more recent case from this year --

15 **THE COURT:** Maybe you all can agree to that and I
16 won't have to worry about it.

17 **MR. SOLTERO:** I think we will.

18 **THE COURT:** Okay. Because if it's a Texas cause of
19 action, we use those definitions.

20 **MR. SOLTERO:** That's precisely the --

21 **THE COURT:** Thank you. I'm sorry.

22 **MR. B. GUTIERREZ:** We're still planning to visit this
23 evening, your Honor.

24 **THE COURT:** And all weekend.

25 //

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1 **MR. B. GUTIERREZ:** Yes, your Honor.

2 **THE COURT:** You've got five minutes left on the
3 break. Sorry. Now we're off.

4 **(Recess taken from 2:36 p.m. to 2:41 p.m. / Parties**
5 **present / Jurors not present)**

6 **THE COURT:** Everyone back?

7 **MR. UNIDENTIFIED:** Would you like me to approach --

8 **THE COURT:** Okay. I assume everybody is back. Would
9 you check and see if the jurors are ready, Mr. Padilla?

10 **(Pause)**

11 **THE MARSHAL:** All rise for the jury.

12 **(Jurors enter courtroom at 2:41 p.m.)**

13 **THE COURT:** Thank you. You may be seated.

14 **MR. RANGEL:** May I proceed?

15 **THE COURT:** You may proceed, sir.

16 **MR. RANGEL:** Thank you, your Honor.

17 **DIRECT EXAMINATION (CONTINUED)**

18 **BY MR. RANGEL:**

19 Q Mr. Flores, during the time that you and Mr. King were
20 making payments to Vanderbilt, I mean you've had some
21 difficulties doing that, correct?

22 A Yes, sir.

23 Q And from time to time -- you said it was primarily
24 Mr. King -- Mr. King on both of your behalf would call the call
25 center at Vanderbilt to try to work out some arrangements so

1 late payments could be accepted, correct?

2 A I would believe so. I'm not sure.

3 Q Well, I mean it is true that over the seven-year period
4 that you made payments and you lived in the home, Vanderbilt
5 definitely would try to work with you whenever you were late.

6 A I believe so.

7 Q And you were late many, many, many times, correct?

8 A Yes. Yes, sir.

9 Q And one of the ways that -- I mean that Vanderbilt would
10 work with you is by talking to Mr. King on the phone about what
11 arrangements could be made, correct?

12 A I believe so.

13 Q And you knew from the beginning that all of the payments
14 were going to go to Vanderbilt.

15 A Once we got our payment book in the mail, that's when I
16 knew where they would be going.

17 Q And the payment book came early in 2002.

18 A I believe it came about maybe a month or two after we
19 closed on the manufactured home.

20 Q All right. And, in fact, early on you got a welcome
21 letter from Vanderbilt welcoming you as a customer.

22 **MR. RANGEL:** Could we pull up CP 154?

23 Q Correct?

24 **(Pause)**

25 The date on this letter is January 5th, 2002,

1 correct?

2 A Yes, sir.

3 Q And that's the date that you signed the contract, correct?

4 A Yes, sir.

5 Q And so from the day you signed the contract you were on
6 notice that the payments were going to go to Vanderbilt and you
7 were going to be a customer of Vanderbilt, correct?

8 A I was not aware of that. I did not become aware of it
9 until we got the payment book in the mail.

10 Q But this letter was in the materials that were given to
11 you, because you brought it to your deposition, correct?

12 A If that was part of the contract, the initial contract, we
13 didn't get a copy of that when we left. Yeah, the initial
14 contract. So we would have not received that.

15 Q At some point you did get that.

16 A It doesn't look familiar to me.

17 Q I'll represent to you, Mr. Flores, that you brought those
18 documents --

19 A Okay.

20 Q -- to your deposition.

21 A Then, yes, I believe --

22 Q I got these documents from you.

23 A Okay.

24 Q Okay?

25 A Uh-huh.

1 Q So from early on you were on notice that you were going to
2 be a Vanderbilt customer, correct?

3 A Yes, sir.

4 Q And you started making payments in March of 2002, correct?

5 A Yes, sir.

6 Q And, in fact, from time to time you would use Western
7 Union to send in payments, correct?

8 A I believe so.

9 Q And, in fact, from time to time you would go the HEB store
10 from where that fax came to make payments from there, correct?

11 A That's where there's a Western Union, so it could be
12 possible.

13 Q And, in fact, you may have made the first payment from
14 there, correct?

15 A I don't recall.

16 Q Do you remember whenever you would make a payment you
17 would get a receipt and have your signature on it?

18 A If we sent a money order or Western Union money gram, I'm
19 sure we did.

20 **MR. RANGEL:** Judge, I want to offer into evidence
21 something that has not been admitted, CP 33 at 117, 18.

22 **THE COURT:** So what's the number?

23 **MR. RANGEL:** CP 33 at 117, 18.

24 **THE COURT:** I'm not understanding anything but the
25 number is 33. Is it 33?

1 **MR. RANGEL:** Yes, your Honor.

2 **THE COURT:** Is it Plaintiffs' 33?

3 **MR. RANGEL:** Yes.

4 **THE COURT:** Any objection?

5 **MR. B. GUTIERREZ:** No objection.

6 **THE COURT:** Plaintiffs' 33 is admitted.

7 **(Plaintiffs' Exhibit Number 33 was received in evidence)**

8 Just for ease of the way I understood this, is that
9 all of the Plaintiffs together have one list of exhibits and
10 the Defendants, Intervenor, Counter Plaintiffs have one list
11 of exhibits.

12 **MR. RANGEL:** Your Honor, just for the record, there's
13 one Plaintiff. Vanderbilt is the only Plaintiff.

14 **THE COURT:** Okay.

15 **MR. RANGEL:** But the Clayton parties have -- the
16 Clayton parties, which includes Vanderbilt, you're correct; one
17 list of exhibits.

18 **THE COURT:** Whatever.

19 **MR. RANGEL:** But there's only one Plaintiff.

20 **THE COURT:** It's good to say I'm correct.

21 **MR. RANGEL:** You're correct.

22 **(Laughter)**

23 I'll say it again.

24 **THE COURT:** All right. So when you said "C" I
25 thought you were -- okay.

1 **MR. RANGEL:** The Clayton parties.

2 **THE COURT:** The Plaintiffs' parties. Thank you.

3 **MR. RANGEL:** Plaintiff parties' 33.

4 **THE COURT:** Thank you very much.

5 **MR. RANGEL:** If we would call up, your Honor, CP 33
6 at 117, 118.

7 **BY MR. RANGEL:**

8 Q Do you recognize that as one of those receipts,
9 Mr. Flores, with your --

10 A Yes, sir.

11 Q That's your signature at the bottom, correct?

12 A Yes, sir.

13 Q And this is just one example of many receipts where you
14 all would send money grams from the HEB store, Wal-Marts and
15 other places, correct?

16 A Correct.

17 **(Pause)**

18 Q Now, when you ran into difficulties in the spring of 2009
19 after Mr. King left, you started receiving collection letters
20 from Vanderbilt, correct?

21 A I don't recall that I did.

22 Q Okay. CP, Clayton parties' Exhibit 146.

23 **(Pause)**

24 Do you recognize that -- strike that.

25 This is a notice of default and right to cure default

1 letter, correct?

2 A Yes, sir.

3 Q And it's addressed to you, correct?

4 A Yes, sir.

5 Q And it's dated May 5th, 2009.

6 A Yes, sir.

7 Q And I believe there's an envelope attached to it right
8 behind it.

9 (Pause)

10 I don't guess there is.

11 (Pause)

12 There it is. That's the envelope that was attached
13 to that notice, correct?

14 A Yes. It appears to be.

15 Q And it's addressed to you, correct?

16 A Yes, sir.

17 Q And it's addressed at 1700 Carmen Street, Alice, Texas,
18 correct?

19 A Correct.

20 Q And that's where you were living on the date of that
21 letter, correct?

22 A I believe I was.

23 Q I'm sorry?

24 A I believe I was.

25 Q Okay. And so the envelope containing that notice was

1 properly addressed.

2 A Yes, sir.

3 Q And in May of 2009, you and Mr. King were behind in your
4 payments, correct?

5 A In May of 2009?

6 Q Yes, sir.

7 A I believe we were according to the letter.

8 Q Okay. And it's your testimony that you don't recall
9 receiving that letter, correct?

10 A I don't recall receiving it.

11 Q But you were -- 1700 Carmen is the address where you would
12 receive communications from Vanderbilt, correct?

13 A Yes, sir.

14 Q In fact, you would receive these monthly loan statements
15 at that address, correct?

16 A I believe so.

17 Q And you certainly received monthly loan statements at
18 1700 Carmen, right?

19 A I'm sorry?

20 Q You received the monthly loan statements at 1700 Carmen.

21 A I believe so.

22 Q But with respect to this notice you do not recall
23 receiving it, correct?

24 A If it was certified mail, I didn't receive it.

25 Q Do you know whether it was certified mail?

1 A It doesn't look familiar to me, so I would not know for
2 sure if it was or not.

3 Q Okay. And certainly if you received a certified mail and
4 you got a notice that it was certified mail, you could just
5 choose to ignore it, right?

6 A That's a possibility.

7 Q And I mean but when you got regular mail from Vanderbilt
8 that was not certified, you would accept that.

9 A I believe -- I accepted all my mail that was left there.

10 Q So as long as the mail was addressed to Cesar Flores at
11 1700 Carmen you would accept it.

12 A Yes, sir.

13 Q Including mail from Vanderbilt.

14 A Well, it just depended. If I was -- I worked in Corpus
15 and lived in Alice. So I was in Corpus pretty much from
16 9:00 o'clock in the morning to 7:00 or 8:00 at night. So a lot
17 of times my mom would get my mail for me, so that's how I
18 received my mail.

19 Q But there's no question that mail addressed to you at
20 1700 Carmen was properly addressed to the notice of address
21 that you had provided to Vanderbilt.

22 A Yes.

23 Q Because all the communications you had received from
24 Vanderbilt starting early on were at 1700 Carmen, right?

25 A Right.

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1 Q Okay. So the next notice, Clayton parties' Exhibit 147.

2 (Pause)

3 And this is another notice directed to you, correct,
4 Mr. Flores?

5 A Yes, sir.

6 Q And it's a notice of intent to accelerate your debt,
7 correct?

8 A Yes, sir.

9 Q And the date on that upper right-hand corner appears to be
10 June 16th, 2009, correct?

11 A Correct.

12 Q And I believe this one also has an envelope attached to
13 it. And is it addressed to Cesar Flores at 1700 Carmen Street,
14 Alice, Texas 78332?

15 A The address is correct.

16 Q And on that date that that letter was sent you were living
17 at that address.

18 A This was in June?

19 Q June 16th, 2009.

20 A I believe I was.

21 Q Okay. And just like with -- your testimony is that you
22 don't recall receiving this letter.

23 A If it was left in the mailbox, my mom got it for me and I
24 received it. If it wasn't then, no, I didn't.

25 Q And according to the envelope it certainly was sent to you

1 at the address you had on record with Vanderbilt for
2 correspondence, correct?

3 A Yes, sir.

4 **MR. RANGEL:** Then if we'll pull up CP Exhibit 150.

5 Q And this is a notice of acceleration, correct?

6 A Yes, sir.

7 Q And it's directed to Cesar Flores, correct?

8 A Yes, sir.

9 Q And it's dated 6-29-09, correct?

10 A Yes, sir.

11 Q And I believe this one also has an envelope.

12 And is it addressed to Cesar Flores at 1700 Carmen
13 Street, Alice, Texas?

14 A Yes, the address is correct.

15 Q And on that date, June 29th, '09, you were living at
16 1700 Carmen.

17 A I believe I was.

18 Q And that was the address that you had on record on file
19 with Vanderbilt back in Tennessee for purposes of Vanderbilt
20 being able to communicate with you.

21 A I believe so.

22 Q And is it your testimony that you don't recall receiving
23 this letter?

24 A It does not look familiar to me.

25 **MR. RANGEL:** On the issue of assignment, I would call

1 up CP 3, Exhibit 211, Page 3, Paragraph 6.01.

2 **(Pause / Whispers heard off the record)**

3 I'm sorry. CP Exhibit 211, Page 3, Paragraph 6.01.

4 Q You understand, Mr. Flores, that you have filed some
5 pleadings in this case, correct?

6 A Yes, sir.

7 Q And referring to CP Exhibit 211 at Page 3, Paragraph 6.01,
8 your lawyers on your behalf made the statement, "Clayton
9 assigned the contract to Vanderbilt," correct?

10 A It appears to say that.

11 **MR. RANGEL:** Your Honor, I would ask the Court to
12 take judicial notice of that pleading and that judicial
13 admission.

14 **THE COURT:** Of the pleadings in this court?

15 **MR. RANGEL:** Yes, your Honor.

16 **THE COURT:** I don't think I need to take judicial
17 notice of pleadings in this court.

18 **MR. RANGEL:** Okay. Just okay.

19 **THE COURT:** I'll just remember them.

20 **MR. RANGEL:** Okay.

21 **THE COURT:** Thank you.

22 **MR. RANGEL:** Very well.

23 **BY MR. RANGEL:**

24 Q Now, going back to the closing, Mr. Flores, there were
25 other documents that were signed that day, correct?

1 A I believe so.

2 Q Okay. And I've asked you questions about some of those
3 documents during your deposition, correct?

4 A Correct.

5 Q Okay.

6 **MR. RANGEL:** I would call up CP Exhibit 9 at 55, 63.

7 Q And this is a real estate lease dated 1-7-02, correct?

8 A Oh, yes, sir.

9 Q And then there is a signature on Pages 5, which is
10 Bates 59; 6, Bates 69, Bates 63, correct?

11 **(Pause)**

12 And there's a signature line there for Cesar Flores,
13 correct?

14 A Yes, sir.

15 Q And it's your testimony that you did not sign your name to
16 that document at that place, correct?

17 A I don't remember signing it.

18 Q Well, is it your testimony under oath that you did not
19 sign your name to this document?

20 A I don't remember signing it.

21 Q Okay. Well, would I be correct in saying that?

22 A It appears to be my signature. I just don't remember
23 signing it.

24 Q Okay. Well, that's different from what you said during
25 your deposition.

1 **MR. RANGEL:** I would call up video clip number nine.

2 **MR. B. GUTIERREZ:** Excuse me, your Honor.

3 **THE COURT:** Yes, sir?

4 **MR. B. GUTIERREZ:** Before they play that I think
5 Mr. Rangel needs to give him an opportunity to answer before he
6 attempts to impeach him with prior testimony. He has not --

7 **THE COURT:** Sir, is this a admitted exhibit?

8 **MR. RANGEL:** It's his deposition, your Honor.

9 **THE COURT:** And what are you doing with it?

10 **MR. RANGEL:** I'm seeking to impeach him, because his
11 answer that he just gave is different from when he gave the
12 deposition.

13 **THE COURT:** Well, what you need to do is you need to
14 know how to use that.

15 **MR. RANGEL:** Well, I read him the question, your
16 Honor.

17 **THE COURT:** And he said?

18 **MR. RANGEL:** A different answer.

19 **THE COURT:** Okay. Then that's all you can do I
20 believe.

21 **MR. RANGEL:** But I have not been able to impeach him
22 with his prior testimony.

23 **THE COURT:** I'm sorry what you need -- well, what do
24 you want to do exactly?

25 **MR. RANGEL:** I want to play the video clip of --

1 **THE COURT:** No.

2 **MR. RANGEL:** -- his testimony showing that his
3 answers --

4 **THE COURT:** That isn't how that works.

5 **MR. RANGEL:** Okay. Very well.

6 **BY MR. RANGEL:**

7 Q So, Mr. Flores, with respect to your signature on that
8 document, is it your testimony that it is or it is not your
9 signature?

10 A It is not my signature.

11 Q Thank you. Then let's go to the second part is Exhibit 7
12 at 29. And this document is a power of attorney and it also
13 has a signature for Cesar Flores, correct?

14 A Yes, sir.

15 Q Okay. And is it your testimony that that is not your
16 signature?

17 A I don't remember signing it. When I first saw this, the
18 power of attorney, with Mr. Gutierrez and then again at my
19 deposition, it was presented with two other power of attorneys,
20 one of which I have no doubt was not my signature. I was a
21 little suspicious. Again, the address on this form does not
22 coincide with the address in regards to the manufactured home.

23 Q Okay. But my question is: Is it your signature on this
24 document?

25 A I don't think it is.

1 Q Then there was another power of attorney, Clayton parties'
2 Exhibit 5 -- I'm sorry -- Exhibit 8 at 104. And this is
3 another document.

4 Is that your signature?

5 A It doesn't look familiar to me. I don't recall it being
6 my signature.

7 Q Okay. So your testimony is it's not your signature.

8 A Right.

9 Q Then I don't believe I had asked you about Clayton
10 parties' Exhibit 5, which is the same CP Exhibit 7 at 30.

11 And this is another document that has signature lines
12 for Cesar Flores in two places, correct?

13 A Yes, sir.

14 Q And your testimony is, is that's not your signature,
15 correct?

16 A That is definitely not my signature.

17 Q Thank you. Mr. Flores, it is your testimony that you have
18 not paid in full the debt that you took on when you signed that
19 contract when you bought the mobile home, correct?

20 A Is it my testimony that we have not paid in full?

21 Q Correct.

22 A I believe that my contract with Vanderbilt and Clayton
23 Homes has been satisfied.

24 **MR. RANGEL:** Object to non-responsive, your Honor.

25 **THE COURT:** I don't know.

Flores - Direct / By Mr. Rangel

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1 **MR. RANGEL:** May I rephrase the question?

2 **THE COURT:** Go ahead.

3 **MR. RANGEL:** Okay.

4 **BY MR. RANGEL:**

5 Q You agreed to make 144 payments, correct?

6 A Correct.

7 Q You have not made the 144 payments, correct?

8 A No.

9 Q You have made only 84 payments, correct?

10 A Correct.

11 **MR. RANGEL:** Judge --

12 **THE COURT:** Yes, sir.

13 **THE COURT:** -- I will pass the witness subject to
14 being able to recall him when they take the affirmative role on
15 their counterclaim and I can cross examine him. And there are
16 some things about the counterclaim that have not --

17 **THE COURT:** Thank you.

18 **MR. RANGEL:** That have not been raised that I would
19 like to ask later.

20 **THE COURT:** Thank you, sir.

21 **MR. B. GUTIERREZ:** May I, your Honor?

22 **THE COURT:** You may proceed.

23 //

24 //

25 //

1 **CROSS EXAMINATION**

2 **BY MR. B. GUTIERREZ:**

3 Q Mr. Flores, good afternoon.

4 A Good afternoon.

5 Q I was noticing that most, if not all, of those documents
6 that Mr. Rangel was showing you appear to spell your name
7 Ceaser as opposed to Cesar Flores.

8 Tell us your name for the record.

9 A Cesar Flores.

10 Q And how do you spell "Cesar Flores"?

11 A C-e-s-a-r.

12 Q Okay. Have you ever used -- strike that.

13 Have you ever signed documents Ceaser Flores?

14 A Never.

15 Q Where did you grow up, Mr. Flores?

16 A In Alice.

17 Q What kind of an education do you have?

18 A I went all the way through elementary and middle school,
19 junior high. My junior year in high school I dropped out and
20 received my GED.

21 Q The collection letters that were shown to you and that the
22 jury saw a few minutes ago -- they're in evidence -- that
23 Mr. Rangel was asking you showed a mailing address. You don't
24 recall receiving them.

25 Do you remember those questions? Do you remember

1 those documents that were on the screen the jury just looked at
2 them?

3 A Yes, sir.

4 Q Did you notice that each one of those documents referenced
5 a loan number and account number? Do you remember?

6 A I don't remember.

7 Q Do you remember in opening statement when Mr. Gutierrez
8 was talking about the retail installment contract?

9 A Yes, sir.

10 Q Exhibit Number 8. And, of course, I'm not going to pull
11 out those letters, but this is the number that I was
12 referencing to, the loan number that was in those collection
13 letters. Do you remember that?

14 A Yes, sir.

15 Q Okay. Same account number.

16 A Yes, sir.

17 Q All right. Same account number that appears in the deed
18 of trust release and -- this would be Exhibit 12. Same account
19 number here referencing Cesar Flores.

20 A Yes, sir.

21 Q Is that correct?

22 A Yes, sir.

23 Q Same account number that was in the mechanic lien release;
24 is that correct?

25 A Yes, sir.

1 Q Is that why you have answered the question of -- the
2 question from Mr. Rangel a few minutes ago concerning paid in
3 full the way you did?

4 A Yes, sir.

5 Q I believe he asked you, you agree -- you agree,
6 Mr. Flores, that you have not paid your contract in full. And
7 you disagree with that, right?

8 A Yes, sir.

9 **MR. RANGEL:** Judge, I'm going to object to the
10 leading question.

11 **THE COURT:** Sustained.

12 **BY MR. B. GUTIERREZ:**

13 Q And when did you first become aware that this document,
14 this deed of trust release referencing your account,
15 referencing your loan, had been filed by the Clayton parties,
16 Vanderbilt Mortgage, as well as CMH Homes?

17 A When I came to visit with you.

18 Q After you were sued?

19 A Yes, sir.

20 Q Okay. This contract, retail installment contract, that
21 Mr. Rangel showed you and he pointed to this area here,
22 (indicating), about real property, do you remember those
23 questions?

24 A Yes, sir.

25 Q Did you or Mr. King own any property at the time that you

1 purchased this mobile home?

2 A No, sir.

3 Q Did your sister, Maria Trevino, ever go with you to the
4 Clayton Homes Store 214 here in Corpus Christi?

5 A No, sir.

6 Q Did your brother-in-law, Arturo Trevino, ever go with you
7 to the Corpus Christi Clayton Homes Store 214?

8 A No, sir.

9 Q Did you ever tell them that they needed to go to the store
10 to sign any papers?

11 A No, sir.

12 Q They gave you permission to put your mobile home on some
13 of their property?

14 A Yes, sir.

15 Q Mr. Rangel also asked you and used the phrase or the words
16 "land-in-lieu." Do you remember that?

17 A Yes, sir.

18 Q And I believe you've already told us that this word
19 "land-in-lieu" was not discussed.

20 A No, sir. Not at the time of...

21 Q I believe what you have testified is that the sales person
22 assured you you would be approved if you had a place where you
23 could put your mobile home.

24 A Correct.

25 Q And did he request proof from you that you had a place

1 where you could put your mobile home?

2 A I believe he did.

3 Q Is that why you faxed -- is that why you caused this,
4 (indicating), document to be faxed to the Clayton Homes store
5 so they could know that you had a place where you could place
6 your mobile home?

7 A I believe so.

8 Q And did you do this after you spoke to your sister and
9 your brother-in-law?

10 A Yes.

11 Q And did you do this after you were given permission to
12 place this mobile home that you were wanting to buy, did you do
13 this after you were given permission by your sister and
14 brother-in-law?

15 A Yes, sir.

16 Q Now, when you went to close the deal -- and I believe the
17 documents and the retail installment contract indicates that
18 this closing took place on January the 5th of 2002, okay?

19 A Yes, sir.

20 Q When you went to the closing -- we'll call it the
21 "closing" -- who was at the closing? Who were the persons that
22 were at the closing?

23 A Alvin King, myself and the sales person.

24 Q Okay. Do you remember the name of the sales person?

25 A I do now.

1 Q Okay. And what is his name?

2 A I believe his first name was Lance. I don't know the last
3 name.

4 Q Okay. Was any other person there with you at this
5 closing?

6 A No, sir.

7 Q Have you ever met or do you know an individual by the name
8 of Benjamin Frazier?

9 A No, sir.

10 Q Okay. A few minutes ago Mr. Rangel was asking you about
11 some power of attorneys.

12 A Yes, sir.

13 Q Okay. One of those power of attorneys has a signature
14 that is spelled Ceaser Flores. Did you see that?

15 A Yes, sir.

16 Q Okay. And I believe you told -- you have told us that --
17 I think your words were "I definitely did not sign that." Do
18 you remember that?

19 A Yes, sir.

20 Q Did you notice that in that document there was a signature
21 of another individual besides a signature that purports to be
22 Mr. King's? Did you notice that there was a signature from a
23 Benjamin Frazier as a notary? Did you see that?

24 A Yes, sir.

25 Q Was that man anywhere at this closing that took place on

1 January 5th of 2002?

2 A Not while Mr. King and myself were there.

3 Q Did you know, Mr. King, that this man who you have already
4 told us that you have never met that you don't know, did you
5 know that Mr. Frazier who at the time that he was being
6 represented by this attorney here, testified that his signature
7 had been forged --

8 **MR. RANGEL:** Judge, I'm going to object to him
9 injecting testimony in the form of a question in a did-you-know
10 question. I object. That's improper use...

11 **THE COURT:** Sustained.

12 **(Pause)**

13 **BY MR. B. GUTIERREZ:**

14 Q When you signed this retail installment contract, when you
15 and Mr. King signed this retail installment contract, did the
16 closer, did the individual that was closing this deal, ever
17 tell you that your contract was going to be assigned to
18 Vanderbilt Mortgage?

19 A No, sir.

20 Q A few minutes ago we saw a, what Mr. Rangel referred to I
21 believe as a welcome letter. Do you remember that?

22 A Yes, sir.

23 Q Okay. And is there anywhere -- did you see anywhere in
24 that letter anything that said that the contract that you and
25 Mr. King signed had been assigned to Vanderbilt Mortgage?

1 A No, sir.

2 Q In fact, if we -- and the jury will look at the
3 document -- if you look at the document, it talks about a
4 servicing contract, right; that Vanderbilt was servicing your
5 loan; is that correct?

6 A I believe so.

7 Q Okay. Did you ever receive any letter, any notice, after
8 you signed your contract from the people that you were buying
9 the contract notifying you, giving you notice that your
10 contract that you had signed, that you and Mr. King had signed,
11 had been assigned to Vanderbilt Mortgage?

12 A No, sir.

13 Q Was that ever discussed at the closing?

14 A No, sir.

15 Q Okay. I want you to assume with me, Mr. Flores, that the
16 President of CMH Homes, he is here today, Mr. David Booth, has
17 testified --

18 **MR. RANGEL:** Your Honor, again I would object to
19 asking the witness to assume --

20 **THE COURT:** Sustained.

21 **BY MR. B. GUTIERREZ:**

22 Q Was your closing recorded? Was there a recording made of
23 your closing?

24 A We were told that there would be, so I believe so.

25 Q Okay. And who told you this?

- 1 A The salesman, the gentleman.
- 2 Q And have you seen the request that we made of Vanderbilt
- 3 to produce that recording?
- 4 A Yes, sir.
- 5 Q What have they told us?
- 6 A I believe their response was that they could not find it.
- 7 Q After you signed the contract, you and Mr. King signed
- 8 this retail installment contract, you made all of your payments
- 9 of 2002; is that correct?
- 10 A I believe so, yes.
- 11 Q You made all of your payments of 2003?
- 12 A Yes, sir.
- 13 Q You made all of your payments of 2004?
- 14 A Yes, sir.
- 15 Q You made all of your payments of 2005?
- 16 A Yes, sir.
- 17 Q You made all of your payments of 2006?
- 18 A Yes, sir.
- 19 Q You made all of your payments of 2007?
- 20 A Yes, sir.
- 21 Q You made all of your payments of 2008?
- 22 A Yes, sir.
- 23 Q And I believe that Mr. Rangel is correct you stopped
- 24 paying in the spring of 2009.
- 25 A Correct.

1 Q Where were you living in the fall -- where were you living
2 in October of 2005?

3 A I was there at 1700 Carmen Street at the mobile home.

4 Q I believe Mr. Rangel talked to you about calls that were
5 being made by the Vanderbilt people to you and Mr. King,
6 collection calls if we could call them that. Remember that,
7 those questions?

8 A Yes, sir.

9 Q Okay. They were calling, and I believe you have admitted
10 that they would call you because of lateness of payment,
11 payments not being made on time, those sort of calls?

12 A Yes, sir.

13 Q They were calling you asking you to make a payment, they
14 were calling you to pay them money; is that correct?

15 A Yes, sir.

16 Q Did anyone at Vanderbilt ever call you and tell you that
17 they had decided to release the mortgage on your mobile home?

18 A No, sir.

19 Q Did anyone at Vanderbilt ever tell you while these calls
20 continued after 2005, did anyone at Vanderbilt ever tell you
21 that as of October 8th of 2005 they were going to consider your
22 retail installment contract as having been paid in full?

23 **MR. RANGEL:** Objection, your Honor. It assumes facts
24 not in evidence.

25 **THE COURT:** Sustained.

1 **BY MR. B. GUTIERREZ:**

2 Q Did anyone at Vanderbilt Mortgage ever call you and tell
3 you that they had decided to release your mortgage because of
4 many instances of fraud and forgery in many, if not all, of the
5 sales originating out of Store 214?

6 **MR. RANGEL:** Objection. Assumes facts not in
7 evidence and these are argumentative questions, your Honor.

8 **THE COURT:** Sustained.

9 **(Pause)**

10 **BY MR. B. GUTIERREZ:**

11 Q In a few minutes if we look back at your retail
12 installment contract, do you remember the amount of interest
13 that you were being charged?

14 A If I'm correct, 10 percent interest. I'm not 100 percent
15 sure.

16 Q At one point after you sent in your credit application
17 that Mr. Rangel showed to the jury a few minutes ago you were
18 told that you had been approved, right?

19 A Yes, sir.

20 Q Did anyone at Clayton Homes -- did anyone at Clayton Homes
21 or Vanderbilt ever tell you that instead of being approved for
22 (indiscernible / coughing) point 99 percent that you had been
23 approved for a lesser interest rate?

24 A No, sir.

25 Q Let me show you a document that comes out -- well, let me

1 show you the front of the document. This comes out of Exhibit
2 Number -- I believe this is CP, Clayton parties' Number 8.
3 This is a credit application report. This is regarding you and
4 Mr. King, okay? Do you see that?

5 A Yes, sir.

6 Q And if we go to -- if we go to what is identified as
7 Bates 88 of that exhibit, you'll notice that you had actually
8 been approved for a different payment plan than the -- what was
9 it, 144 payments at 10.99 percent?

10 A Yes, sir.

11 Q Had you seen this document before today?

12 A Never.

13 Q How does that make you feel that even though you went
14 there in good faith hoping to get a good deal, thinking you got
15 a good deal, but you had actually been approved for a lesser
16 interest rate?

17 A It upsets me.

18 **(Pause)**

19 Q When you closed the deal, I believe Mr. Rangel was asking
20 you whether or not you had signed a lot of papers. Do you
21 remember that?

22 A Yes, sir.

23 Q One of the documents that you signed was, I believe they
24 refer to it as a -- as I'm asking you these questions I'm
25 trying to see if I can find the documents -- I think it's

1 referred to a HUD statement. And another one I believe is a
2 good-faith statement, okay. I'm going to show you first the
3 HUD statement that, again, comes out of Clayton parties'
4 Exhibit Number 8, and we'll look at the first page, which is
5 aside from all of these documents spelling your name Ceaser --
6 do you see that?

7 A Yes, sir.

8 Q This is a document -- and I'm going to go to signature
9 spaces where you and Mr. King signed -- but this is clearly a
10 document that was executed there, signed there, at the Clayton
11 Homes' store when you closed your deal on January the 5th of
12 2008.

13 A Yes, sir.

14 Q And if we look at the document, it outlines the different
15 expenses -- it's not too clear, but you can see at the top
16 settlement charges; it has the amount; actually starts with the
17 contract price here, (indicating); has the amount. And as we
18 go it talks about the gross amount that's going to be due from
19 Flores and King right here, (indicating). I say the
20 "borrowers"; you're the borrower.

21 And there's the second page here, (indicating).
22 Here's where you and Mr. King signed, January 5th, there in
23 this -- where were you, there at the Clayton Homes store?

24 A Yes, sir.

25 Q At an office?

1 A Yeah. They had like a -- I believe it was like a little
2 manufactured office type thing.

3 Q Now, in a few minutes we're going to look at some other
4 documents, the documents having to do with the Trevinos.

5 But when you were there they were supposed to go over
6 this and show you what expenses you were going to be
7 responsible for, right?

8 A Yes, sir.

9 Q Now, if we look at -- do you see where it says "government
10 recording and transfer charges"? Do you see that?

11 A Yes, sir.

12 Q Let me see if I can...

13 **(Voices heard off the record)**

14 If we see where it says "government and recording and
15 transfer charges," if we look to the far right, it doesn't show
16 any charges. It doesn't show that they were charging any
17 amount of money to file any documents with at least for any
18 deeds or any mortgages or any releases.

19 Do you see that?

20 A Yes, sir.

21 Q If there had been a charge perhaps for a deed or a
22 mortgage or something and you knew you had not signed any type
23 of deed or mortgage, that would be a red flag would it?

24 A Yes, sir.

25 Q You would ask a question, right?

1 A Yes, sir.

2 Q You trusted this individual to act and behave and act in
3 good faith, right?

4 A Yes, sir.

5 **MR. RANGEL:** Judge, I'm going to object to the
6 leading questions.

7 **THE COURT:** Sustained.

8 **BY MR. B. GUTIERREZ:**

9 Q Let's look at another document. This is the good-faith,
10 good-faith estimate, another document, Bates 252. It comes out
11 of the Clayton parties' exhibits. And if we go down to --

12 **MR. RANGEL:** Excuse me, counsel. Could you identify
13 it for the record?

14 **MR. B. GUTIERREZ:** Bates 252 out of Clayton parties
15 number --

16 **THE COURT:** What we need to do is know exactly what
17 the trial exhibit is.

18 **MR. B. GUTIERREZ:** The trial Exhibit Number 8, your
19 Honor.

20 **THE COURT:** Okay. Thank you, sir.

21 **MR. B. GUTIERREZ:** Yes.

22 **THE COURT:** I misheard. Thank you very much.

23 **BY MR. B. GUTIERREZ:**

24 Q Okay. Again, we look at an estimate. That's supposed to
25 be an estimate of what you could stand to pay, right?

1 A Yes, sir.

2 Q And do you see if they estimated that they would charge
3 you any fees for recording any documents at the city or at the
4 county or anywhere? Any fees there?

5 A No, sir.

6 Q If there were some fees there, would that have maybe
7 raised a red flag that something was going on?

8 A It possibly would have.

9 Q Let's see if we can look at the...

10 **(Pause)**

11 Let me show you Exhibit Number 6. This is a deed of
12 trust. It has the name of Maria Trevino, Arturo Trevino.

13 Do you see that at the very top?

14 A Yes, sir.

15 Q And before I ask you some questions about this page, let's
16 go to the very last page of this document. And I'll ask you --
17 it shows that someone paid \$20 to file this document, right?

18 A Yes, sir.

19 Q To record this document, right?

20 A Yes, sir.

21 Q And does it show where this document should be returned to
22 at the bottom?

23 A Clayton Homes.

24 Q Look at -- this is Page 6 of that document, and it shows a
25 recording stamp on there where it went; is that correct?

1 A Yes, sir.

2 (Pause)

3 MR. B. GUTIERREZ: Your Honor, at this time I would
4 like to pass the witness, Mr. Flores, and reserve the right to
5 recall him in our case-in-chief, your Honor.

6 THE COURT: Of course. Thank you, sir.

7 Mr. Gowan?

8 MR. RUMLEY: Mr. Rumley.

9 THE COURT: I'm sorry, Mr. Rumley. I can't believe
10 I --

11 MR. RUMLEY: I kind of look like Mr. Gowan.

12 THE COURT: You don't. I'm very sorry.

13 MR. RUMLEY: Your Honor, no questions at this time.

14 THE COURT: Mr. Rumley, all right.

15 MR. RANGEL: A few follow-up, your Honor?

16 THE COURT: Yes, sir.

17 MR. RUMLEY: He's a better golfer.

18 THE COURT: I'm sorry. I blame it on my cold.

19 REDIRECT EXAMINATION

20 BY MR. RANGEL:

21 Q Mr. Flores, if we would look at Clayton parties' Number 8,
22 that first page that Mr. Gutierrez showed you.

23 (Pause / Voices heard off the record)

24 THE COURT: What are you looking for?

25 MR. RANGEL: The first --

1 **THE COURT:** Eight.

2 **MR. RANGEL:** CP 8, the first page that Mr. Gutierrez
3 showed him. He didn't refer to the Bates stamp. That's what
4 I'm having trouble identifying. It's the first page that he
5 showed him where he -- perhaps Mr. Gutierrez can help me out --
6 the one that showed the credit report.

7 **(Counsel confer off the record)**

8 It's the first page of the document.

9 **(Counsel confer off the record)**

10 May I confer with counsel, your Honor?

11 **THE COURT:** Surely.

12 **(Pause / Counsel confer off the record)**

13 **MR. RANGEL:** I apologize, your Honor.

14 **(Pause)**

15 I can't find it just now but I'll get it.

16 **THE COURT:** Why don't you continue to have somebody
17 in your group look for it --

18 **MR. RANGEL:** Yes.

19 **THE COURT:** -- and you can come back to it.

20 **MR. RANGEL:** That's it. He found it.

21 **THE COURT:** See, there you go.

22 **(Laughter)**

23 **BY MR. RANGEL:**

24 Q Mr. Flores, this is the credit application report that
25 Mr. Gutierrez showed you, correct?

1 A Yes, sir.

2 Q And this was generated in connection with your application
3 to get approved for financing from Vanderbilt, correct?

4 A Correct.

5 Q And this was generated at the time, around the time that
6 you were buying the mobile home, correct?

7 A I'm not sure.

8 Q Okay. Well, let's look -- let's look at the very last two
9 sentences at the top. Transaction title. What does it say?

10 A Land-in-lieu.

11 Q And it's still your testimony that there was no discussion
12 about land-in-lieu when you were buying this mobile home,
13 correct?

14 A Correct. And I never saw this.

15 Q Okay. Then notes. We have nice land here. It has been
16 in the applicant's family for a long time. No problem with
17 budget; they are ready to close.

18 You were the applicant, right?

19 A Yes, sir.

20 Q And the land that is being referred to is the Lot 36 where
21 the mobile home was going to be placed, correct?

22 A Correct.

23 Q And, in fact, that Lot 36 had been in your family for a
24 long time, correct?

25 A Yes, sir.

1 Q And the only way they could have known that is because you
2 as a member of the family would have told CMH Homes about that,
3 correct?

4 A I'm sure.

5 Q Okay. And so the documentation here reflects that it was
6 land-in-lieu and the land that was being provided in lieu of a
7 down payment was the land that had been in your family for a
8 long time, correct?

9 A Correct.

10 Q You also -- Mr. Gutierrez asked you some questions about a
11 tape recording.

12 During the closing of the transaction did you ever
13 see the salesman take out a tape recorder?

14 A I don't remember. I don't believe I did.

15 Q In fact, you did not, correct?

16 A I don't remember.

17 Q Okay. In your deposition you said "no."

18 A Well, I mean I don't remember. I don't remember him
19 pulling something out and setting it on the desk.

20 Q And did you ever see the salesman start a tape recorder?

21 A No.

22 Q Did you ever see him turn off a tape recorder?

23 A Not that I can remember.

24 Q To your knowledge was the transaction tape recorded?

25 A We were told it would be, but I can't say that I sat there

1 and remember seeing him turn it on.

2 Q I mean if you didn't see a tape recorder turned off or on
3 or a tape recorder on the table, more likely than not it was
4 not tape recorded, correct?

5 A I don't know.

6 Q Okay. We'll go back to CP 1.

7 **THE COURT:** Is something wrong with Juror Number 8?
8 Were you sleeping?

9 **JUROR NUMBER 8:** (Indiscernible)

10 **THE COURT:** Pardon?

11 **JUROR NUMBER 8:** Sorry.

12 **(Pause)**

13 **THE COURT:** How much did you miss?

14 **JUROR NUMBER 8:** Nothing.

15 **THE COURT:** Okay. Go ahead.

16 **BY MR. RANGEL:**

17 Q Going to Page 2, Mr. Flores, on the Paragraph G,
18 Itemization, or the block -- the left. The reference there is
19 to appraisal fee, correct?

20 A Yes, sir.

21 Q That relates to the appraisal on the land that was being
22 used as collateral for the purchase of the mobile home,
23 correct?

24 A I would assume so.

25 Q There is nothing else to be appraised, right, except for

1 the land, correct?

2 A I believe so, uh-huh.

3 Q And finally, Mr. Flores, Mr. Gutierrez pointed out that
4 you didn't have any notice that this contract was being
5 assigned to Vanderbilt, correct?

6 A Correct.

7 Q Again, if you look at Page 1 of the contract, very top, it
8 says "assignee, Vanderbilt Mortgage and Finance, Inc.,"
9 correct?

10 A Correct.

11 Q And the second sentence says that the seller will submit
12 the contract to be assigned to Vanderbilt once you were
13 approved, correct?

14 A It does, yes.

15 Q And you were approved, correct?

16 A Yes.

17 Q And the reason you were approved is because you started
18 making payments to Vanderbilt, correct?

19 A Was that the reason I was approved?

20 Q Let me restate the question.

21 A Okay.

22 Q You started making payments to Vanderbilt, correct?

23 A Correct.

24 Q So it stands to reason that you were approved by
25 Vanderbilt so you can make the payments to Vanderbilt, correct?

1 A I thought Clayton Homes approved me. I mean I didn't know
2 who did the approving at that time.

3 Q Well, the contract says it was going to be assigned to
4 Vanderbilt, correct?

5 A It does say that, yes.

6 Q So you're on notice from the time that you signed the
7 contract that it was going to be assigned to Vanderbilt,
8 correct?

9 A It does say that on there.

10 Q And throughout the period of time that Mr. Gutierrez laid
11 out when you were making payments, you were making all those
12 payments to Vanderbilt, correct?

13 A Yes.

14 MR. RANGEL: Your Honor, I'll pass the witness
15 subject to being able to --

16 THE COURT: Yes, sir.

17 MR. RANGEL: -- cross examine when Mr. Gutierrez
18 recalls him.

19 THE COURT: Sure. Anything further, sir?

20 MR. B. GUTIERREZ: Just a few questions.

21 THE COURT: Sure.

22 RECROSS EXAMINATION

23 BY MR. B. GUTIERREZ:

24 Q You have already testified that that credit report, credit
25 application that we saw a few minutes ago that comes out of

1 Exhibit 8, the first time that you saw that, the first time
2 that you discovered that this people had actually approved you
3 for a lesser interest rate than what they had charged you,
4 right?

5 A Yes, sir.

6 **MR. B. GUTIERREZ:** We'll reserve the rest of our
7 questions, your Honor, at this time.

8 **THE COURT:** Thank you.

9 **FURTHER REDIRECT EXAMINATION**

10 **BY MR. RANGEL:**

11 Q Mr. Flores, you told Mr. Gutierrez that you had never
12 signed a document that spells your name Ceaser, C-e-a-s-e-r,
13 correct?

14 A Correct.

15 Q Looking at Exhibit CP Number 1, buyer's name, how is your
16 name spelled?

17 A C-e-s -- C-e-a-s-e-r.

18 Q So the document had that spelling, correct?

19 A The document had that spelling, yes.

20 **MR. B. GUTIERREZ:** Excuse me, your Honor. May I
21 object to --

22 **THE COURT:** Yes.

23 **MR. B. GUTIERREZ:** -- misstating the evidence and
24 misstating the testimony of my client, Mr. Flores. Mr. Flores
25 specifically said he has never signed Ceaser Flores.

1 **MR. RANGEL:** That was not my question, your Honor.
2 My question was whether this document -- this contract has his
3 name spelled Ceaser, this contract that he signed. So I was
4 not misstating his testimony.

5 **THE COURT:** Well, I think the jury understands, don't
6 you think, Mr. Gutierrez?

7 **MR. B. GUTIERREZ:** Yes, your Honor.

8 **THE COURT:** Okay.

9 **BY MR. RANGEL:**

10 Q And are you known as Ceaser by some of your friends and
11 family?

12 A Some people call me Cesar; some people call me Ceaser,
13 Cesar. I mean it just depends on who I'm around.

14 Q Okay.

15 A But to my family and pretty much all my life I've either
16 been referred to as Cesar or Ceaser.

17 Q Thank you, Mr. Flores.

18 **MR. B. GUTIERREZ:** One question.

19 **FURTHER RECROSS EXAMINATION**

20 **BY MR. B. GUTIERREZ:**

21 Q A few minutes ago Mr. Rangel showed you a document,
22 remember a few minutes ago, charging on appraisal fees, do you
23 see, \$400?

24 A Yes, sir.

25 Q Did you know that the appraisal on this property was not

1 prepared until almost two weeks after you had signed your --

2 **MR. RANGEL:** Your Honor, I would object. He is
3 testifying about a question.

4 **MR. B. GUTIERREZ:** Exhibit 8 will show the appraisal
5 report from Tiller and Associates (phonetic) dated January
6 16th, your Honor. That's in evidence.

7 **THE COURT:** Overruled.

8 **MR. B. GUTIERREZ:** That's all the questions I have at
9 this time. We will reserve our questions.

10 **THE COURT:** All right. Thank you very much. You may
11 stand down.

12 Are you finished everyone with Mr. Flores?

13 **MR. RANGEL:** Subject to being recalled.

14 **THE COURT:** At this time. Thank you, sir. You may
15 stand down.

16 **THE WITNESS:** Thank you, your Honor.

17 **(Witness steps down)**

18 **THE COURT:** Call your next witness.

19 **MR. RANGEL:** Alvin King.

20 **THE CLERK:** Would you come forward, please? Would
21 you raise your right hand?

22 **ALVIN KING, PLAINTIFFS' WITNESS, SWORN**

23 Have a seat, please, and watch your step.

24 **THE COURT:** You may proceed. Thank you.

25 **MR. RANGEL:** Thank you, your Honor.

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DIRECT EXAMINATION

BY MR. RANGEL:

Q Please state your name for the record.

A Alvin E. King, III.

Q And, Mr. King, where do you live?

A I live here in Corpus Christi, Texas.

Q How long have you lived in Corpus Christi?

A About a little over a year.

Q Okay. At some point did you live in Alice, Texas?

A Yes, sir.

Q When did you live in Alice, Texas?

A I lived in Alice, Texas -- actually, I was going to school in Houston and living in Alice, Texas from the end of 2001 to the middle of 2009. For a short period of time I lived in Houston, was going to school and working there, and then moved into the mobile home that we purchased following getting out of mortuary school.

Q Okay. And you are a mortician?

A Yes, sir.

Q Okay. And you are the same Alvin King who purchased this mobile home that we've been talking about all day with Mr. Flores from CMH Homes, correct?

A Yes, sir.

Q And you went to the sales center in late December '01 with Mr. Flores to look at the mobile home.

1 A Yes, sir.

2 Q And the two of you had discussed buying a mobile home
3 together.

4 A Me and Mr. Flores had discussed either buying a mobile
5 home, buying a house, renting an apartment. We had discussed
6 several different options.

7 Q And one day in late December you were driving around
8 Corpus Christi and you drove by the CMH Homes lot and you
9 stopped and you looked around.

10 A Yes, sir.

11 Q And there were -- you had two visits there, correct?

12 A Yes, sir.

13 Q And you understand that this is a lawsuit originally filed
14 by Vanderbilt in connection with that mobile home, correct?

15 A Yes, sir.

16 Q And on January 5th, 2002, you and Mr. Flores signed the
17 contract to purchase the mobile home, correct?

18 A Yes, sir.

19 Q And we've seen it up there. It's CP Number 1.

20 **(Pause)**

21 Do you recognize that as the contract, Mr. King?

22 A Yes, sir.

23 Q And then I believe on the following pages your signature
24 appears in two places, correct?

25 A Yes, sir, I believe so.

1 Q It appears here, (indicating); and that is your signature,
2 correct?

3 A Yes, sir.

4 Q And you signed your name there, correct?

5 A Yes, sir.

6 Q And I believe it also appears on Page 4. That is your --
7 the second signature is your signature, correct?

8 A I believe that to be my signature.

9 Q And there's no doubt that you signed it.

10 A Yes, sir.

11 Q Just like Mr. Flores signed it, correct?

12 A Yes, sir.

13 Q And these are authentic signatures that did not need to be
14 notarized, correct?

15 A I don't believe so.

16 Q They were not notarized, correct?

17 A No, sir.

18 Q But you specifically recall signing the document.

19 A Yes, sir.

20 Q Now, under the contract you and Mr. Flores agreed to make
21 144 monthly payments, correct?

22 A Yes, sir, we did.

23 Q And you made payments for a period of time; in fact, you
24 lived in it for seven years and you made payments, then you
25 stopped making payments, correct?

1 A Correct.

2 Q And you stopped making payments in the spring of 2009; is
3 that correct?

4 A Yes, sir.

5 Q And at the time that you stopped making the payments you
6 had not made all 144 payments, correct?

7 A No, sir.

8 Q And to this day you have not made the 144 payments.

9 A No, sir.

10 Q In fact, you've made, the record will reflect, 84
11 payments, correct?

12 A If that's what the record says.

13 **THE COURT:** I'm sorry. You need to speak up please,
14 sir. Thank you.

15 **BY MR. RANGEL:**

16 Q And you heard Mr. Flores testify that he has not made 144
17 payments, correct?

18 A Yes, sir.

19 Q And, in fact, you and Mr. Flores have not paid in full for
20 that mobile home, correct?

21 A I believe that because of documents that mobile home has
22 been paid in full.

23 Q You personally have not paid in full --

24 A No, sir.

25 Q -- for the mobile home, correct?

1 A No, sir.

2 Q And neither has Mr. Flores, correct?

3 A No, sir.

4 Q And you don't know of anybody who's paid the 144 payments
5 for you, correct?

6 A No, sir.

7 Q During that first visit when you went to the mobile home
8 sales store you were not in a position to make a down payment
9 were you?

10 A No, sir.

11 Q And neither was Mr. Flores, correct?

12 A I wouldn't --

13 Q As best you can recall.

14 A I don't believe so.

15 Q You recall when you were visiting with that salesman
16 during the first visit that there were various options
17 discussed, right? Financing options?

18 A I don't remember exactly what options were discussed at
19 that time. I know we stopped to look at the two mobile homes.

20 Q And you and Mr. Flores had basically picked out the two
21 mobile homes that you would be interested in buying one of them
22 if you could make a deal, right?

23 A Yes, sir.

24 Q And during that first visit was there a discussion of
25 whether you would have to make a down payment?

1 A The only thing that I remember is, them talking about is
2 if we did have a piece of property, which we did not at that
3 time, to place the mobile home on that we could be approved and
4 that we would not have to have a down payment.

5 Q Okay. So your understanding is that so long as there was
6 a piece of property for you to place the mobile home you would
7 not have to make a down payment, correct?

8 A Yes, sir.

9 Q And, of course, that would apply in every situation
10 whenever somebody is buying a mobile home, correct?

11 A I don't know. I know that's what they told us. How would
12 I know --

13 Q Okay.

14 A -- about any others?

15 Q So are you saying that there was no discussion of having
16 to put up land as collateral in order to avoid having to make a
17 down payment?

18 A No, sir.

19 Q Is it your testimony that there was no discussion about
20 this land-in-lieu program?

21 A No, sir.

22 Q Now, at that first visit was it your understanding that
23 Mr. Flores had already spoken with his sister about locating
24 the property on her lot?

25 A I believe in my deposition I put that the first visit. It

1 was not until after the first visit.

2 Q Okay. So you were incorrect when you testified in your
3 deposition?

4 A Yes, sir. And it wasn't until after our first visit that
5 I believe Mr. Flores talked to his sister about the land.

6 Q And you realize that when you gave your deposition you
7 were under oath.

8 A Yes, sir.

9 Q And under oath you told me when I asked you the question
10 that at the first visit at the sales lot by that time
11 Mr. Flores had already spoken with Maria Trevino about locating
12 the lot, correct?

13 A Yes, sir.

14 Q And now your answer today is different, correct?

15 A Yes, sir.

16 Q Now, you heard Mr. Flores testify that you were the one
17 who faxed those documents from the HEB on January 3rd, 2002,
18 correct?

19 A Yes, sir.

20 Q From whom did you obtain those documents?

21 A I believe we both filled out the application and he gave
22 me the document from his sister for me to fax.

23 Q So Mr. Flores is the one who had obtained the copy of the
24 deed that the jury has already seen, correct?

25 A I believe so.

1 Q And then you filled out the application, your part of the
2 credit application, and Mr. Flores filled out his part and then
3 you faxed everything in, correct?

4 A Yes, sir.

5 Q And did Mr. Flores tell you why he had obtained a copy of
6 the deed to Lots 35 and 36 from his sister?

7 A I believe that -- I do believe or do recall that he -- we
8 needed that to show them what -- where we were going to be
9 placing the mobile home.

10 Q And as far as you're concerned that was the only reason
11 that he was providing that property description.

12 A Yes, sir.

13 Q Had you had any discussions with the salesman where the
14 salesman told you bring me a property description?

15 A No, sir.

16 Q Okay. That was something between Mr. Flores and the
17 salesman.

18 A Yes, sir.

19 Q And obviously, under the contract you agreed to make those
20 payments, which you have not made, correct?

21 A Correct.

22 Q You lived in the mobile home until April of 2009.

23 A Correct.

24 Q And then you left to go to Refugio?

25 A For a short time.

1 Q And you went to live with your mother?

2 A Yes, sir.

3 Q And so you -- is that the last time that you lived in the
4 mobile home?

5 A Yes, sir.

6 Q And you have not gone back to live there?

7 A No, sir.

8 Q You've abandoned the mobile home since then?

9 A I do not feel that I've abandoned the mobile home being
10 that I -- that somebody lived there.

11 Q But as -- I'm sorry.

12 A I left Cesar in charge of the mobile home.

13 Q But as far as you living in the mobile home, you have not
14 lived there since April of 2009.

15 A Yes, sir.

16 Q And that's when you stopped making the payments.

17 A Correct.

18 Q And when you left you had no intention to go back and you
19 have not gone back, correct?

20 A I have not gone back. I can't say that I didn't have any
21 intentions of going back.

22 Q Do you have any intention of going back to living in the
23 same mobile home with Mr. Flores?

24 A Not at this time.

25 Q And you haven't had that intention since you left,

1 correct?

2 A No, sir.

3 Q Is that correct?

4 A Correct.

5 **(Pause / Voices heard off the record)**

6 Q Mr. King, you signed this contract and agreed to be bound
7 by all of its terms, correct?

8 A Correct.

9 Q And at the time according to the contract there is a
10 specific reference to the contract being assigned to
11 Vanderbilt, correct?

12 A I believe so.

13 Q So when you signed the contract because you agreed to be
14 bound by everything, you were on notice of that, correct?

15 A I did not know at the time they were assigning it. I know
16 that that's what the contract states, but I don't know that
17 they ever assigned it to them.

18 Q Well, you do know that you all started making payments to
19 Vanderbilt; the first payment was in March, right?

20 A Correct.

21 Q And you continued making payments to Vanderbilt for seven
22 years until the spring of 2009 when you moved out, correct?

23 A Yes, sir. That's who sent us our payment book.

24 Q Okay. And so you made the payments to Vanderbilt because
25 it was your understanding that you owed the money to

1 Vanderbilt, correct?

2 A It was not my understanding. I paid the payments to
3 Vanderbilt because that's who the payment book was sent from.

4 Q Are you telling this jury that you're making payments to
5 an entity that perhaps you didn't owe the money to at the time?

6 A It was Vanderbilt Mortgage.

7 Q All right. That's to whom -- I mean that's to whom you
8 were making the payments.

9 A Yes, sir.

10 Q And over the period of time that you made those payments,
11 you and Mr. Flores had difficulties from time to time, correct?

12 A Correct.

13 Q And you heard Mr. Flores testify that when there were
14 difficulties you would be the individual who would primarily
15 call the call center in Tennessee, correct?

16 A Correct.

17 Q And you did that.

18 A Correct.

19 Q And when you spoke with individuals at the call center, I
20 mean they wanted to work with you, correct?

21 A Correct. Most of the time.

22 Q And most of the time they did work with you, right?

23 A Yes, sir.

24 Q I mean there were times when you were late and you would
25 call that -- you said this is reason I'm late; we'll make the

1 payment next month or next week, and they worked with you.

2 A Correct.

3 Q In fact, there's one specific individual that sometimes
4 you would ask to speak with her, correct, by the name of Kim?

5 A Whoever -- yes, sir.

6 Q Do you remember the name Kim?

7 A Yes, sir.

8 Q I mean you spoke with her many times, right?

9 A Correct.

10 Q And she was always very professional, right?

11 A I believe so.

12 Q And she was always willing to work with you, right?

13 A Yes, sir.

14 Q And she did, right?

15 A Most of the time, yes, sir.

16 Can you all not hear me?

17 Q Now, when you moved out of the home in March of 2009, you
18 knew you were behind in the payments.

19 A Yes, sir.

20 Q And you told Mr. Flores: Look, I am moving out and it's
21 going to be your responsibility to make the payments, correct?

22 A Yes, sir.

23 Q Because he was going to be living in the mobile home,
24 correct?

25 A Yes, sir.

1 Q And so you all had an understanding and agreement amongst
2 yourselves?

3 A Yes, sir.

4 Q But you never advised Vanderbilt of that agreement did
5 you?

6 A I don't remember -- I don't recall. I know I had spoke to
7 Vanderbilt one time but I don't remember exactly what the
8 conversation was about.

9 Q And when you moved, you left from 1700 Carmen and moved to
10 Refugio, you did not give written notice to Vanderbilt that you
11 had changed your address, correct?

12 A No, sir.

13 Q In the contract you saw the reference to Lots 35 and 36,
14 Gallimore, Alice, Texas.

15 **MR. RANGEL:** Let's pull it up again, please.

16 A I believe.

17 Q Buyer gives seller a security interest in real property
18 located at 3536 Gallimore, Alice, Texas, correct?

19 A I see that.

20 Q And you see that you were one of the buyers, correct?

21 A Yes, sir.

22 Q And you agreed to give a security interest in real
23 property, correct?

24 A I did not agree -- I signed the contract but I did not
25 agree that that was what was happening, because I didn't own

1 any property.

2 Q But that is in the contract that you signed.

3 A Well, that says 3536 Gallimore, Alice, Texas.

4 Q But does it say --

5 A I don't believe there's that -- an address there.

6 Q I'm sorry. I'm sorry, Mr. King.

7 A Go ahead.

8 Q But you did agree to give a security interest in real
9 property.

10 A That's what the contract states. I never made any
11 agreements to give any property because I didn't have any
12 property to give.

13 Q Okay. But you did agree to be bound by all the terms of
14 that agreement.

15 A I did sign the contract, yes, sir.

16 Q You're in business; are you not?

17 A Yes, sir.

18 Q And you told me in your deposition you know what a
19 contract is, and when you sign a contract you agree to be bound
20 by it, right?

21 A Yes, sir.

22 Q Now, you know one of the issues that we've been talking
23 about today is the Lots 35 and 36 being pledged as security or
24 as collateral for the purchase of the mobile home, right?

25 A Yes, sir.

1 Q And you saw the deed that referred to Lots 35 and 36,
2 Gallimore Addition, Lot 1, Alice, Texas, right?

3 A I believe so, yes, sir.

4 Q That you faxed over.

5 A Yes, sir.

6 Q And it's your testimony, is it not, Mr. King, under oath
7 that you had no idea that land was involved in connection with
8 the purchase of the mobile home, correct?

9 A Correct.

10 Q That you had no idea that Lots 35 and 36 had been pledged
11 as security for the purchase of the mobile home.

12 A That's correct.

13 Q And that you didn't find out about that until Vanderbilt
14 sued you and Mr. Flores to repossess the home, correct?

15 A Correct.

16 Q But isn't it true, Mr. King, that during one or more of
17 those calls that you made to the call center in Tennessee you
18 specifically asked about having one of those lots released?

19 A I don't ever recall speaking to Vanderbilt about that.

20 Q And are you saying that you don't recall or that you
21 didn't do it?

22 A I don't ever recall talking to Vanderbilt about releasing
23 any lots.

24 Q Certainly if you had done that, that would be evidence
25 that you knew that lots were pledged, right?

1 A Correct.

2 Q And so if that is true, then you're not being truthful
3 when you say that you didn't know anything about it, correct?

4 A What I'm saying is I've never talked to Vanderbilt about
5 releasing a lot. The only thing I ever talked to Vanderbilt
6 about was about being behind on our payments.

7 Q You never called Vanderbilt and talked about refinancing
8 to release one of the lots.

9 A Yes, I did. I did also call about refinancing but not to
10 release the lot.

11 Q Okay. Did you ever call Vanderbilt at the call center to
12 inquire about the deed of trust that had been filed in
13 connection with the purchase of the mobile home?

14 A No, sir, because I was not aware of that.

15 Q You would agree with me, Mr. King, that if, in fact, you
16 have not made all of the payments that you agreed to make under
17 the contract, Vanderbilt would have the right to repossess the
18 home?

19 A Yes, sir.

20 Q During the closing you specifically recall that there were
21 other documents that you signed, correct?

22 A Yes, sir.

23 Q Let me rephrase that. There were other documents that
24 were presented for signature at the closing.

25 A Yes, sir.

1 Q And you recall I asked you about some of those documents
2 during your deposition.

3 A Yes, sir.

4 Q Okay.

5 **MR. RANGEL:** I'd like to call up CP Exhibit 7 at 29.

6 Q And this is a power of attorney document, correct?

7 A Yes, sir.

8 Q And there is a place for your signature there, correct?

9 A Yes, sir.

10 Q And it's your testimony that's not your signature.

11 A Correct.

12 Q Okay.

13 **MR. RANGEL:** We'll call up CP Exhibit 7 at 30.

14 Q And that document also has a couple of places for your
15 signature, correct?

16 A Yes, sir.

17 Q And it's your testimony that those are not your
18 signatures, correct?

19 A Correct.

20 Q That you didn't sign your name there, correct?

21 A No, sir.

22 Q Is that correct?

23 A That's correct.

24 Q Okay. Then there is a CP Exhibit 8 at 107, Bates 107,
25 108.

1 **(Pause)**

2 And there's a couple of places that's Alvin King.
3 That is your signature, correct?

4 A I believe so.

5 Q That's what you told me in your deposition.

6 A Yes, sir. That's my signature.

7 Q Mr. King, do you still stand by the obligations you
8 undertook under that contract that you signed?

9 A Can you repeat the question?

10 Q Do you still stand by the obligations that you undertook
11 when you signed that contract?

12 A Do I still stand by them now?

13 Q Yeah.

14 A No, sir.

15 Q Okay. Even though you have not made all of the payments,
16 you do not stand by what you promised to do in that contract.

17 A No, sir.

18 Q At the time that you signed the contract certainly you
19 agreed to be bound by everything in the contract, correct?

20 A Yes, sir.

21 **MR. RANGEL:** Judge, I will pass the witness subject
22 to being able to cross examine him on --

23 **THE COURT:** Thank you.

24 //

25 //

1 **CROSS EXAMINATION**

2 **BY MR. B. GUTIERREZ:**

3 Q Mr. King, good afternoon. I just have a few questions at
4 this time, and it pertains to the retail installment contract
5 that we've been looking at now for a while. We looked at it
6 with Mr. Flores, and both myself as well as Mr. Rangel asked
7 you some questions about that contract; is that correct?

8 A Yes, sir.

9 Q All right. The question that I would ask you is who
10 was -- what persons were at this closing that took place
11 according to these documents on January 5th of 2002?

12 A Myself, Mr. Flores and the sales person.

13 Q And do you remember the sales person's name?

14 A I believe that I remember him now. I couldn't recall
15 before, but I do believe I know him now.

16 Q Could you speak up just a little bit? If you'd get closer
17 to the mike.

18 What is it that you recall? Do you recall his name
19 or --

20 A I believe his name was Lance.

21 Q Okay. And if we go back to the retail installment
22 contract that we've been looking at for a while, which is again
23 for the record Exhibit 8, Mr. Rangel had asked some
24 questions -- had asked some questions of Mr. Flores. One of
25 the questions dealt with some of the expenses. Let me see if I

1 could zoom in on this again.

2 And one of the expenses that he was talking about was
3 an appraisal fee. Do you see that?

4 A Yes, sir.

5 Q Okay. And I think one of the questions that I asked
6 Mr. Flores, I think one of the last questions I asked him, was
7 whether or not he was aware that -- and I think I might have
8 used -- I think I might have said did you know that the
9 appraisal was prepared like a couple of weeks later? And I
10 think I might have misrepresented the date. I think I said
11 January 16th.

12 And do you see the date there, January 15th?

13 A Yes, sir.

14 Q Okay. How many days after -- how many days after you
15 closed the deal, you and Mr. Flores, does this report appear to
16 have been prepared for the Clayton Homes people here in Corpus
17 Christi?

18 A I believe we closed on the 5th. That's dated the 15th, so
19 it would be ten days.

20 Q So you were sitting back here when I showed the good-faith
21 estimate to Mr. Flores, right?

22 A Yes, sir.

23 Q Now we see a contract where you were being charged some
24 fees where any work was done, right?

25 A Yes, sir.

1 Q Have you --

2 **MR. RANGEL:** Excuse me, Judge. Just so we keep
3 track, if we could have the Bates number or if you're referring
4 to an exhibit --

5 **MR. B. GUTIERREZ:** I'm sorry. It's Exhibit 181,
6 Clayton parties.

7 **BY MR. B. GUTIERREZ:**

8 Q This is an exhibit, Mr. King, that is actually a Clayton
9 parties' exhibit, which has been admitted, 181; and it has a
10 Bates, for the benefit of Mr. Rangel -- excuse me; let me get
11 this.

12 **THE COURT:** Just do the trial exhibit, please.

13 **MR. B. GUTIERREZ:** Okay.

14 **(Pause)**

15 **BY MR. B. GUTIERREZ:**

16 Q You noticed the name of Mr. Benjamin Frazier, did you not,
17 on some of those documents?

18 A Yes, sir.

19 Q Have you ever met a Mr. Benjamin Frazier?

20 A No, sir.

21 Q Did you ever receive copies of this retail installment
22 contract?

23 A No, sir.

24 Q Was your closing recorded by this individual that you now
25 recall the first name as Lance?

1 A We were told that we were going to be recorded. I never
2 saw the actual tape recorder. But he did at one point say that
3 he was going to record the ending of our paper work and
4 everything.

5 Can you hear me okay?

6 **MR. B. GUTIERREZ:** At this time, your Honor, we will
7 pass the witness and reserve our questions for Mr. King during
8 our case-in-chief.

9 **MR. RANGEL:** I just have a few more, your Honor.

10 **THE COURT:** Thank you.

11 **MR. RANGEL:** If we could pull up CP Exhibit 145.

12 **(Pause)**

13 **REDIRECT EXAMINATION**

14 **BY MR. RANGEL:**

15 Q Mr. King, this is a notice of default and right to cure
16 default addressed to you dated 5-05-09, correct?

17 A Yes, sir.

18 Q And I believe there's an envelope. And it's 1702 Carmen,
19 correct?

20 A Yes, sir.

21 Q And that was the address that was given to Vanderbilt when
22 you and Mr. Flores purchased the mobile home because 1700 was
23 an empty lot, correct?

24 A I believe so.

25 Q And that's the address that's reflected on the retail

1 installment contract.

2 A I believe so.

3 Q Okay. And it's your testimony you didn't receive this
4 letter, correct?

5 A No, sir.

6 Q Okay. And it's also your testimony that you never
7 personally changed the 1702 Carmen address with Vanderbilt.

8 A I would believe so because I believe I got documents from
9 them at 1700 Carmen Street. But I'm not for sure.

10 Q On the date of this letter, May 5th, '09, you had already
11 left Alice and moved to Refugio.

12 A Yes, sir.

13 Q And the address where you were living in Refugio was what?

14 A I lived with my mother.

15 Q What was that address?

16 A My mailing address was P.O. Box 326, Refugio, Texas.

17 Q What was the physical address?

18 A The physical address was 211 East Federation.

19 **THE COURT:** Oh, we don't give physical addresses.

20 **MR. RANGEL:** I'm sorry.

21 **BY MR. RANGEL:**

22 Q There was a physical address separate from your --

23 A Yes, sir.

24 Q Okay.

25 **MR. RANGEL:** Then if we could call up CP Exhibit 148.

1 Q And this is to Alvin King dated 6-16-09, notice of intent
2 to accelerate your debt. And I believe there's an envelope
3 attached to this.

4 And again, it's your testimony you didn't receive
5 this letter, correct?

6 A No, sir.

7 Q And it's addressed to Alvin King, 1702 Carmen, correct?

8 A Yes, sir.

9 Q On the date of that letter, June 16th, '09, you had
10 already moved to Refugio to live with your mother.

11 A Yes, sir.

12 Q Okay. And again, you had not notified Vanderbilt of that
13 change in address, correct?

14 A No, sir.

15 Q Is that correct?

16 A That is correct.

17 **MR. RANGEL:** If we could call up CP Exhibit 149.

18 Q And this is a notice of acceleration to Alvin King, date
19 6-29-09; is that correct?

20 A Yes, sir.

21 Q And I believe there's an envelope attached to this. And
22 Alvin King, 1702 Carmen, Alice, Texas.

23 And by the date of this letter you had already moved
24 to Refugio to live with your mother.

25 A Yes, sir.

1 Q And up until this point you still had not notified
2 Vanderbilt of the change in address, correct?

3 A No, sir.

4 Q And finally, there's a letter, CP Exhibit 151. And this
5 letter is dated July 8th, 2009, correct?

6 A Yes, sir.

7 Q And it's addressed to you at 211 East Federation Street,
8 Refugio, Texas.

9 Is that the address where you were living on that
10 date?

11 A Yes, sir. But that was not a mailing address. No mail
12 comes to that address.

13 Q Did you receive this letter?

14 A No, sir.

15 Q And did you see that the letter was an attempt by
16 Vanderbilt to help you stay in your home?

17 A I assume that's what the letter was.

18 Q Okay.

19 A I didn't receive it, so.

20 **MR. RANGEL:** And finally, we call up CP 181 at
21 Page 146.

22 Q And I believe this is the document Mr. Gutierrez showed
23 you a few minutes ago.

24 Do you recall Mr. Gutierrez asking you questions as
25 related to the appraisal?

1 A Yes, sir.

2 Q And this was in connection with the purchase of the mobile
3 home by you and Mr. Flores, correct?

4 A I assume so.

5 Q And look at the very top, summary of appraisal of the
6 property located at Lot 35, 36, Block 1, Gallimore Addition,
7 Alice, Texas, correct?

8 A That's what the document states.

9 Q And those are the very lots that have been identified in
10 the deed from the Cantus to the Trevinos that you faxed to
11 CMH Homes on January 3rd, 2002, correct?

12 A Yes, sir.

13 Q And so this reflects that in connection with the purchase
14 of the mobile home by you and Mr. Flores an appraisal was done
15 of that property, correct?

16 A That's what the document states.

17 Q All right. And then in the retail installment contract
18 there's an appraisal fee for \$400 relating to the appraisal of
19 that property, correct?

20 A Yes, sir, I do believe so.

21 Q So on its face the appraisal fee was related to these two
22 lots that were part of the transaction where you and Mr. --

23 A I would assume so.

24 Q Correct?

25 A I would assume so.

1 Q I mean that's the only reason there would be an appraisal
2 fee for land in connection with the purchase of the mobile
3 home, correct?

4 A I assume so.

5 MR. RANGEL: Pass the witness, your Honor, reserving
6 the right to cross --

7 THE COURT: Thank you.

8 MR. B. GUTIERREZ: Just a few more questions, your
9 Honor.

10 RECROSS EXAMINATION

11 BY MR. B. GUTIERREZ:

12 Q Does it appear to you, Mr. King, that they were doing
13 things at Clayton Homes after you had closed your deal; they
14 were appraising properties ten days later after you had already
15 closed your deal? Is that right?

16 A Yes, sir.

17 Q I mean I believe they've admitted that -- I think it's
18 agreed that the deal was closed on January 5th of 2002; is that
19 right?

20 A Yes, sir.

21 Q In fact, if we looked at this suspect -- if we could call
22 them suspect deed of trusts, Exhibit Number 6, this was another
23 document --

24 MR. RANGEL: Your Honor, I would object to the
25 sidebar comment.

1 **MR. B. GUTIERREZ:** We withdraw that.

2 **THE COURT:** Sustained.

3 **BY MR. B. GUTIERREZ:**

4 Q If we look at this document, this deed of trust, let's see
5 what date is on this deed of trust and see whether or not it
6 was at the time that you closed the deal or was it after you
7 had left the Clayton Homes' store on January 5th of 2005?

8 A It was after. That document reads January 7th.

9 Q Documents were being generated it looks like, being
10 executed, after you and Mr. Flores had bought a mobile home.

11 A Yes, sir.

12 Q Appraisals were being done; documents were being signed by
13 someone.

14 Did you ever meet this man, John Wells?

15 A No, sir.

16 Q I think you've already told us you've never met this
17 individual.

18 A No, sir.

19 Q By the way, if we look at that -- if we look at and then
20 the jury would look at -- if we look at the signatures here, do
21 they look like the signatures that are on those power of
22 attorneys that you finished giving some testimony about a few
23 minutes ago?

24 A I don't believe --

25 Q The jury will look at them but --

1 A I don't believe so.

2 Q All right. Now, that's the deed of trust. Let's see when
3 this deed of trust was recorded. And this is a submitted
4 document at the courthouse of Jim Wells County. It shows it
5 was filed by Clayton Homes January the 11th at 1:02 p.m.; was
6 recorded in the official records of the Jim Wells County
7 courthouse on January 14th, one day, one day before that
8 appraisal report that Mr. Rangel just showed you, right?

9 A Yes, sir.

10 Q After you and Mr. Flores had closed your deal at the
11 Clayton Homes store; is that right?

12 A Sir?

13 Q Excuse me. You closed your deal on the 5th. These
14 documents are being generated, filed days after your closing,
15 right?

16 A Yes, sir.

17 Q Let's look at the builder's and mechanic's lien contract
18 that -- let's see. And this is Exhibit Number 7. Let's see
19 what date is on that builder's and mechanic's lien contract to
20 see whether or not it was at the time that you closed the deal
21 or after you had bought your mobile home.

22 It's the date of January the 7th, right?

23 A Yes, sir.

24 Q Let's see when it was filed.

25 (Pause)

1 Filed on the same day, the same time as the deed of
2 trust was filed, January 11th, 2002, and recorded the same day
3 that the deed of trust was recorded; is that correct?

4 A Correct.

5 Q Another file stamp there, (indicating), and the name
6 Clayton Homes at the bottom. Do you see that?

7 A Yes, sir.

8 (Pause)

9 Q Do you see this document? I'm not sure if Mr. Rangel -- I
10 believe he might have referred to this document. This is
11 Exhibit 438. This is -- see where it says installation report,
12 manufactured home installation report, at the top? Do you see
13 that right here, (indicating)?

14 A Yes, sir.

15 Q Your mobile home had already been installed on January
16 the 7th. See where it says "date installed"? See that,
17 January the 7th?

18 A Yes, sir.

19 Q Do you see that?

20 A Yes, sir.

21 Q Your manufactured home that you had purchased on
22 January 5th had already been installed in Alice, Texas on
23 property that had been provided to you by the Trevinos.

24 And it is after that date that some of these
25 documents are being executed and filed at the courthouse; is

1 that correct?

2 A Yes, sir.

3 **MR. B. GUTIERREZ:** That's all the questions I have at
4 this time, your Honor. We'll reserve the rest of our questions
5 until our case-in-chief.

6 **THE COURT:** Thank you.

7 **MR. RUMLEY:** No questions.

8 **THE COURT:** No questions?

9 **(Pause)**

10 **MR. RANGEL:** If we could call up CP 1.

11 **FURTHER REDIRECT EXAMINATION**

12 **BY MR. RANGEL:**

13 Q The second sentence, Mr. King, says: "Seller will submit
14 this contract to Vanderbilt and if approved the contract will
15 be assigned to Vanderbilt," correct?

16 A Yes, sir.

17 Q And you and Mr. Flores signed the contract on January 5th.

18 A Yes, sir.

19 Q And on January 3rd is when you had submitted the credit
20 application, correct?

21 A Yes, sir. I believe that's what the fax said.

22 Q And so you're not familiar with the process that was
23 followed to get you approved for financing, correct?

24 A No, sir.

25 Q You don't know the exact date when the actual approval by

1 Vanderbilt occurred, correct?

2 A No, sir, I don't believe so.

3 Q But under the terms of the contract it was going to be
4 submitted to Vanderbilt for approval, correct?

5 A Yes, sir, I believe so.

6 Q And Vanderbilt was going to be providing the financing,
7 correct?

8 A That's what the contract reads.

9 Q All right. And once you and Mr. Flores were approved by
10 Vanderbilt, that's when you started making your payments to
11 Vanderbilt, correct?

12 A Correct.

13 Q But you don't have any personal knowledge of how that
14 approval process, that appraisal process, worked within
15 Vanderbilt, correct?

16 A No, sir.

17 Q Thank you, Mr. King.

18 **FURTHER RECROSS EXAMINATION**

19 **BY MR. B. GUTIERREZ:**

20 Q What you do know of the approval process is that you were
21 actually approved for a lesser interest rate than you were led
22 to believe when you signed the retail installment contract,
23 right?

24 A Correct.

25 **MR. RANGEL:** Objection. Leading, your Honor.

1 **THE COURT:** Are we done with this witness?

2 **MR. B. GUTIERREZ:** Yes, your Honor.

3 **THE COURT:** All right. Thank you. You may stand
4 down.

5 Call your next witness.

6 **(Witness steps down)**

7 **(Pause / Voices heard off the record)**

8 Who is testifying? Do you have a witness?

9 **MR. LOCHRIDGE:** Yes. If we can bring him in from out
10 in the hall.

11 **MR. THAGARD:** May we approach the bench, your Honor?

12 **THE COURT:** Yes. Counsel, please come up quickly.

13 **(Pause)**

14 Okay. We're on the record, so please be quiet.

15 Excuse me. Please be quiet. We're on the record.

16 **(Bench conference on the record begins at 4:34:30 p.m.)**

17 **THE COURT:** That's a first. Yes?

18 **MR. THAGARD:** Your Honor, I just wanted to clear up
19 with the motion in limine. Ms. Russell is going to testify to
20 the collection notes and --

21 **THE COURT:** Who?

22 **MR. THAGARD:** Ms. Russell, Kim Russell. She's our
23 account representative.

24 **THE COURT:** Okay.

25 **MR. THAGARD:** We'll try to get them admitted as a

1 business record. They have objected to them and so we --

2 **THE COURT:** Did she make the records herself?

3 **MR. THAGARD:** A lot of them. But it's a business
4 record. She'll testify to some of them that she made herself,
5 but we also believe that the rest of them come in as a business
6 record and she can testify to them as statements by party
7 opponents.

8 **THE COURT:** I don't know if that's going to happen,
9 but put her on and let her testify about her conversations at
10 least with Mr. Flores. Is this who is testifying now?

11 **MR. THAGARD:** Yes. And should I offer that?

12 **THE COURT:** Thank you.

13 **(Bench conference ends at 4:35:40 p.m.)**

14 Would you come forward, please?

15 **THE CLERK:** Please raise your right hand.

16 **KIM RUSSELL, PLAINTIFFS' WITNESS, SWORN**

17 Thank you. Please be seated.

18 **DIRECT EXAMINATION**

19 **BY MR. THAGARD:**

20 Q Ms. Russell, can you tell us your name, please?

21 A Kim Russell.

22 Q Okay. And who are you employed by?

23 A Vanderbilt Mortgage.

24 **THE MARSHAL:** Excuse me. Your Honor, he would like
25 (indiscernible) break.

1 **THE COURT:** All right. We'll take a ten-minute
2 break. Would you please stand for the jury?

3 **(Jurors exit courtroom at 4:36 p.m.)**

4 **MR. THAGARD:** Your Honor, we can take up their
5 objection to the call notes now or we can wait --

6 **THE COURT:** That's fine. What is the objection? If
7 they prove them up as business records, what is the objection?

8 **MR. B. GUTIERREZ:** Hearsay, your Honor.

9 **THE COURT:** Well, all business records are hearsay.
10 Can you help him, please?

11 **MR. B. GUTIERREZ:** There has been --

12 **THE COURT:** Just a moment. Can you help?

13 **MR. RUMLEY:** Your Honor, we don't believe they
14 qualify under the exception --

15 **THE COURT:** Okay. Let's just go through the business
16 records then and see if you can do that. Go ahead.

17 **MR. THAGARD:** Okay.

18 **VOIR DIRE EXAMINATION**

19 **BY MR. THAGARD:**

20 Q Ms. Russell, as an account representative do you regularly
21 make note and phone calls with customers?

22 A Yes, sir.

23 Q And do all Vanderbilt account representatives?

24 A Yes, sir.

25 Q And are you trained to do that?

1 A Yes, sir.

2 Q Are you trained to type in each and everything that's told
3 to you during that conversation?

4 A Yes, sir.

5 Q Okay. And you're trained to type in the good, the bad and
6 ugly, correct?

7 A Yes, sir.

8 Q If they make a complaint, you type it in, correct?

9 A Yes, sir.

10 Q Okay. And is that data kept by Vanderbilt?

11 A Yes, sir.

12 Q Okay. And is that data used by Vanderbilt on a regular
13 basis?

14 A Every day.

15 Q And is that data used by you to see what people have said
16 in the past?

17 A Yes, sir. Every day.

18 Q Is that data used to help train people to review their
19 past calls?

20 A Yes, sir.

21 Q And to help with training. Are these -- some of these
22 notes were made personally by you, correct?

23 A Yes, sir.

24 Q And they're kept in the regular course of Vanderbilt's
25 business.

1 A Yes, sir.

2 Q Okay. And these notes are used to keep a history of the
3 communications with the customers.

4 A Yes, sir.

5 Q Okay. And Vanderbilt can review the notes -- all right,
6 we've done that.

7 Are these notes the most accurate recordation
8 available to Vanderbilt of all the communications that took
9 place between Vanderbilt and Mr. Flores and Mr. King during the
10 course of the loan?

11 A Yes, sir.

12 Q Okay.

13 **MR. THAGARD:** Your Honor, we would offer them into
14 evidence under Federal Rule of Evidence 803(6) as a business
15 record.

16 **THE COURT:** Pardon?

17 **MR. RUMLEY:** May I ask some questions?

18 **THE COURT:** Yes, you may.

19 ***VOIR DIRE EXAMINATION***

20 **BY MR. RUMLEY:**

21 Q Ma'am, just a few questions.

22 The notes that the lawyer for Clayton Homes asked you
23 about, have you reviewed each of those notes?

24 A Yes, sir.

25 Q Have you spoken to each of the individuals who actually

1 took those notes?

2 A Only a couple, but I read those notes every day.

3 Q But you can't testify as to the truth of any of the notes
4 that any of the other account reps took with respect to any of
5 the collection calls made, right?

6 A Yes, sir, I can.

7 Q Have you talked to each person that made a collection call
8 and verified that the note they made in 2003 is accurate?

9 A Sir, I'm required to know everything that is documented in
10 those notes in the event that that customer calls in and I
11 retrieve that call. I should have to be prepared to know what
12 those previous notes state, and they are taken real time so
13 as --

14 **THE COURT:** Listen carefully to the question.

15 **THE WITNESS:** Yes, your Honor.

16 **THE COURT:** He's asking you how on earth you could
17 know that each one in there is true and correct.

18 **THE WITNESS:** To the best of what I'm reading, I'm
19 going to know what the notes entail because they --

20 **THE COURT:** No, no, no. You're not listening to what
21 he's saying. I mean I don't know what --

22 **MR. RUMLEY:** Anybody can write --

23 **MR. THAGARD:** I don't know why it's relevant, your
24 Honor. We --

25 **THE COURT:** It isn't. But I'm just surprised that

1 she's not going to answer truthfully to this. It isn't
2 relevant to the admission of business records, but she is
3 clearly not telling the truth, and that is really upsetting.
4 It's one thing that sets me off is people making up things they
5 think they want to say, what their employer wants them to say.

6 So go ahead, Mr. Rumley. Continue on.

7 **BY MR. RUMLEY:**

8 Q Ma'am, with respect to the records that were maintained in
9 this -- with respect to this customer, did you actually
10 maintain them?

11 A I only maintained the records that I documented. I did
12 not speak to every account rep that took notes on those
13 accounts. However, if I get a call in from a customer and it's
14 not my customer, I'm going to review the previous notes that
15 the reps took in order to service that loan.

16 **THE COURT:** Everybody understands that. All he asked
17 you was that you can't vouch for the truth and veracity of --

18 **THE WITNESS:** No, your Honor.

19 **THE COURT:** -- each one of the notes you didn't put
20 in there.

21 **THE WITNESS:** No, your Honor.

22 **THE COURT:** How hard is that to say?

23 **THE WITNESS:** It's not, your Honor.

24 **THE COURT:** Then why didn't you do it to begin with?

25 **THE WITNESS:** I apologize, your Honor.

1 **THE COURT:** I mean it's a huge deal, you know.
2 You're supposed to be an honest witness and you're under oath.

3 **THE WITNESS:** Yes, your Honor.

4 **THE COURT:** You've got to listen carefully to what's
5 asked.

6 Go ahead.

7 **BY MR. RUMLEY:**

8 Q With respect to the notes that we're talking about,
9 there's actually a reference on there for the individual
10 account rep, correct?

11 A Yes, sir.

12 Q And so we can see which account rep took which note.

13 A Yes, sir.

14 Q The purpose of taking those notes is for what?

15 A To document the events of the call, what happened. And
16 that way the next person that takes that call or needs to
17 research it will know what happened, what's going on.

18 Q And how within the business are those notes verified? Are
19 the calls recorded?

20 A Yes. Yes, sir, they are.

21 Q And are the calls recorded compared with the notes?

22 A Yes, sir, they are. They're documented real time, so when
23 the customer is on the phone the account rep is noting what's
24 going on.

25 Q Is every call recorded?

1 A I can't answer completely if I know for a fact every call
2 is monitored. We do, however, use recorded calls for training
3 purposes.

4 Q We've taken depositions of David Barton. Do you know him?

5 A Yes, sir.

6 Q Is he your boss?

7 A Yes, sir.

8 Q If he's testified that not 100 percent of the calls are
9 recorded, is he telling the truth?

10 A If he says that they've not been, yes, he is because he
11 would know.

12 Q Are there any recordings of the calls that are compared
13 with your notes in order to see that they're truthful, that
14 they're accurate?

15 A I am not aware of any recordings of any of the notes that
16 I made, sir.

17 Q So you can't tell this Court or me that any of the notes
18 are accurate other than this is what's on a piece of paper,
19 correct?

20 A Yes, sir.

21 **MR. THAGARD:** Your Honor, if I may.

22 **THE COURT:** Yes.

23 ***FURTHER VOIR DIRE EXAMINATION***

24 **BY MR. THAGARD:**

25 Q Ms. Russell, these notes constitute a data compilation,

1 correct?

2 A Yes, sir.

3 Q Okay. And these --

4 **THE COURT:** Well, apparently they're not complete is
5 what -- is that true? Somebody testified that not every single
6 conversation is recorded.

7 **MR. THAGARD:** Well, every single conversation is
8 written down, your Honor. The company records calls
9 infrequently so they're able to monitor. You know, when you
10 get a call and you call in and they say we might record this
11 and we might not, some are audio recorded in order to see what
12 was said and to verify that everybody is following policies and
13 procedures.

14 **BY MR. THAGARD:**

15 Q But Ms. Kim, is it true that every time a customer calls
16 in, the account representative types an entry into the call
17 notes?

18 A Yes, sir.

19 Q And she recalls -- and they type in exactly what was said.

20 A Yes, sir.

21 Q Okay. And that is an act of the company, correct?

22 A Yes, sir.

23 Q Okay. And it's made at the time of the call, correct?

24 A Yes, sir.

25 Q Okay. And it's made -- it's entered into the system.

1 This information is entered into the system by a person who's
2 on the phone with the customer, correct?

3 A Yes, sir.

4 Q So that person has knowledge.

5 **THE COURT:** Apparently, Juror Number 8, the one that
6 keeps falling asleep, says he's got back pain, a headache and
7 he's tired.

8 **MR. RUMLEY:** It sounds like me.

9 **THE COURT:** I was thinking the same thing. So he can
10 suffer with the rest of us. Is that everybody's conclusion?

11 **MR. RANGEL:** We defer to the Court.

12 **THE COURT:** Pardon?

13 **MR. RANGEL:** We defer to the Court.

14 **BY MR. THAGARD:**

15 Q So it's made, it's typed in by a person with knowledge of
16 what's going on at the call?

17 A Yes, sir.

18 Q And it's typed in at the time of the call.

19 A Yes, sir.

20 Q And does Vanderbilt keep these notes in the course of its
21 regular business activity?

22 A Yes, sir.

23 Q And is it the regular practice of Vanderbilt to make these
24 records?

25 A Yes, sir.

1 Q Okay. And you're familiar with everything you've just
2 testified to.

3 A Yes, sir.

4 **MR. THAGARD:** Your Honor, we would offer them as a
5 business record. There's no reason to doubt their veracity.

6 **THE COURT:** Did you want to take her on voir dire?

7 **MR. RUMLEY:** Yes. Just a few more.

8 ***FURTHER VOIR DIRE EXAMINATION***

9 **BY MR. RUMLEY:**

10 Q Ma'am, it's not your job to be a custodian of these
11 records, correct?

12 A I use the records daily; so, yes, it is.

13 Q But do you --

14 **THE COURT:** What do you mean? What do you mean
15 you're the custodian of the records? What does that mean to
16 you?

17 **THE WITNESS:** That I have access to them and that I
18 do business with them, enter them in the system. I read them,
19 I review them and I work with them every day.

20 **MR. THAGARD:** Your Honor --

21 **THE COURT:** It's not necessary for that either. It's
22 just she just keeps stretching the truth. How many of us would
23 stand up and say we're custodian of the records unless they
24 were our own records? Any qualified witness can talk about --
25 can prove these up. But, you know, the stretching is getting

1 to be annoying.

2 ***FURTHER VOIR DIRE EXAMINATION***

3 **BY MR. THAGARD:**

4 Q Have you ever been -- have you ever testified before in
5 any capacity?

6 A No, sir.

7 Q Okay. Have you ever been in a court of law before?

8 A No, sir.

9 Q Okay.

10 **MR. THAGARD:** And, your Honor, even if you were not
11 to rule them in as a business record, we have a lot of other,
12 you know, exceptions. They're statements against interest by a
13 party opponent, not against interest -- they're statements by a
14 party opponent and they're also recordations of present sense
15 impressions.

16 **THE COURT:** Go ahead. Do you have any more
17 questions?

18 **MR. RUMLEY:** I don't have any more questions, your
19 Honor.

20 **THE COURT:** And what is your position?

21 **MR. RUMLEY:** My position is they have not shown under
22 the records of regularly conducted activity that she is the
23 custodian, nor have they established that she's qualified to
24 testify that this group is a business record. She has said
25 that maybe her calls, but not as a group. She is clearly not a

1 custodian. It's not her job to maintain them.

2 **THE COURT:** I don't think she has to be a custodian,
3 but I think that you may be -- she stretched a little too far
4 here on too many times unnecessarily. So why don't you just
5 have her testify about what she talked to Mr. Flores about?

6 **MR. THAGARD:** Well, your Honor --

7 **THE COURT:** Apparently, that's the big deal isn't it,
8 that she remembers specifically talking to Mr. Flores about
9 A, B and C?

10 **MR. THAGARD:** That is a big deal, but I'd like to
11 make a proffer of the other things that the records will show,
12 the call notes in their totality, your Honor.

13 **THE COURT:** Well, we don't do proffers here. You can
14 attach them to an appeal. So --

15 **MR. THAGARD:** Can I argue what they would show, what
16 these records would show, all the things they would show?

17 **THE COURT:** I do not find them to be a trustworthy
18 business record because I don't find her to be a credible
19 witness.

20 So call the jury back in.

21 **MR. RANGEL:** And, Judge, just for the record, there's
22 conversations with Mr. King and Mr. Flores, not just
23 Mr. Flores.

24 **THE COURT:** Okay. Whatever conversations she had she
25 can talk about.

1 **(Pause / Voices heard off the record)**

2 **THE MARSHAL:** All rise for the jury.

3 **(Jurors enter courtroom at 4:49 p.m.)**

4 **THE COURT:** Thank you. You may be seated. And Juror
5 Number 8, try to sit up and listen and tonight get a good
6 night's sleep. This is not vacation, okay? Thank you.

7 Go ahead.

8 **DIRECT EXAMINATION (RESUMED)**

9 **BY MR. THAGARD:**

10 Q Would you tell the jury your name, please?

11 A Kim Russell.

12 Q Okay. And who are you employed by?

13 A Vanderbilt Mortgage and Finance, Incorporated.

14 Q Okay. And what is your job title?

15 A I am currently a team leader in the collections
16 department.

17 Q And have you ever been in a courtroom before?

18 A No, I have not.

19 Q Have you ever testified before?

20 A No, I have not.

21 Q Are you nervous?

22 A Yes, a little bit.

23 Q Can you tell us where you were born, please?

24 A Killeen, Texas.

25 Q And where were you raised?

1 A I moved to Maryville, Tennessee where my father's family
2 lived.

3 Q Before being employed by Vanderbilt where did you work?

4 A I was a -- I started out in Holiday Inn hotels and I moved
5 my way up to managing a Holiday Inn Express hotel.

6 Q And where was that?

7 A In Alcoa, Tennessee.

8 Q And so you managed the Holiday Inn Express.

9 A Yes, sir.

10 Q Okay. And after that what did you do?

11 A I applied for a position at Vanderbilt Mortgage. I wanted
12 a more steady position to where I wasn't on call 24 hours a
13 day, and so I applied at Vanderbilt and I was hired there in
14 April 2002.

15 Q Okay. And what do you do for Vanderbilt?

16 A I am a team leader, which is a manger over a collections
17 group. I have nine people on my team, and we service
18 approximately 8,000 loans collecting mortgage payments.

19 Q And what position did you start out at at Vanderbilt?

20 A As an account representative.

21 Q And when was that?

22 A April the 22nd of 2002.

23 Q And were you promoted?

24 A Yes, sir.

25 Q Okay. And when were you promoted?

1 A Approximately two years later in 2004 I moved to a senior
2 account representative position, that is, an immediate
3 supervisor over a group of account reps.

4 Q Okay. And since then you've been promoted to team leader.

5 A Yes, sir. In July of 2007.

6 Q Okay. And how many people do you supervise?

7 A I have nine people currently.

8 Q And who do you report to?

9 A I have a senior portfolio manager, and he reports to the
10 collections manager.

11 Q And are you assigned -- as a account representative are
12 you assigned to particular accounts?

13 A Yes, sir, I do have -- I service FHA loans currently.

14 Q Okay. But when you were an account representative would
15 you be assigned to specific accounts?

16 A Yes, sir. We call them a "bucket."

17 Q Okay. And, in fact, were you personally assigned to the
18 account of Mr. Flores and Mr. King?

19 A Yes, sir, I was.

20 Q And did you speak to them on the phone personally?

21 A Yes, I did.

22 Q Did you speak to them a lot?

23 A Quite a bit. Mr. King more --

24 Q Okay.

25 A -- than Mr. Flores, but I did speak with them.

1 Q Okay. And have you ever met Mr. King or Mr. Flores
2 before?

3 A No, sir.

4 Q Would you like to meet them?

5 A Sure

6 **MR. THAGARD:** Mr. King, would you raise your hand?

7 **THE COURT:** Would you mind just going ahead with the
8 questions, please?

9 **BY MR. THAGARD:**

10 Q Tell us about the training you received as an account
11 representative.

12 A When I was initially hired on as a team member we would go
13 through one week of classroom training where we would learn
14 about the system, just basic requirements and ways of doing
15 things. And really it's maneuvering the system. The AS400 is
16 what they call it.

17 Q Right. Okay.

18 **MR. THAGARD:** And I'm going to call up, please,
19 Exhibit 207.

20 Q And is this a portion out of one of you all's training
21 manuals?

22 A Yes, sir.

23 Q Okay. And at the bottom it says Lenders' Desk Practices.
24 That's one of your training manuals, correct?

25 A Yes, sir.

1 Q And you studied that, correct?

2 A Yes, sir.

3 Q And at the bottom it gives a date that that training
4 manual was in place, correct?

5 A Yes, sir.

6 Q Okay. And does it show there --

7 **MR. THAGARD:** If you'll highlight -- let's go to --

8 **MR. B. GUTIERREZ:** Excuse me, your Honor. It's my
9 understanding that this exhibit has not been admitted.

10 **THE COURT:** What number is this?

11 **MR. THAGARD:** Exhibit 207.

12 **THE COURT:** Has that been admitted? Is that your
13 exhibit?

14 **MR. THAGARD:** Yes, ma'am.

15 **THE COURT:** It has not been admitted. And let me see
16 counsel at the bench.

17 **(Bench conference on the record begins at 4:54:36 p.m.)**

18 **THE COURT:** That's your Exhibit 207?

19 **MR. THAGARD:** Yes, ma'am.

20 **MR. UNIDENTIFIED:** It's admitted.

21 **THE COURT:** Okay. Then it is admitted. You need to
22 review those.

23 **MR. UNIDENTIFIED:** Your Honor?

24 **THE COURT:** I've got 197 to 211 admitted.

25 **MR. J. GUTIERREZ:** Your Honor, I'm very sorry. I

1 glanced at the wrong paper. It's my mistake. It is admitted.

2 **THE COURT:** All right. Thank you.

3 **MR. J. GUTIERREZ:** Sorry.

4 **(Bench conference ends at 4:54:52 p.m.)**

5 **THE COURT:** Okay. It was my mistake. It has been
6 admitted. I have to review my numbers from time to time and
7 make sure I've got them.

8 You may proceed, counsel. Thank you.

9 **MR. THAGARD:** And I'll just pull up Page 3 of 207.
10 And if you highlight that there, it talks about some training.

11 **BY MR. THAGARD:**

12 Q And if you'll just tell us about the training that an
13 account representative would received in 2003.

14 A By taking a required five-day class comprised of online
15 training courses, a collections manual and classroom
16 instruction. It also emphasizes the Fair Debt Collection
17 Practices Act.

18 Q Okay. And are these five of the courses that you would
19 have taken?

20 A Yes, sir.

21 Q Okay. And as part of the training are you also required
22 to sit in with senior account reps?

23 A Yes, sir.

24 Q Will you tell the jury about that?

25 A Every day during our week of training we would have

1 opportunity to move to the floor to usually the group that we
2 were going to be assigned to. And we would sit with a seasoned
3 account rep to listen in on phone calls they were making at
4 that point just to kind of get more familiar with the way
5 things worked.

6 Q And is your training ongoing? Do you have regular and
7 continual training?

8 A Yes, sir, it is.

9 Q Okay.

10 A We have a 90-day program that's in place that we go
11 through a folder for 90 days. And week by week a senior
12 account rep would get with us and go over different procedures
13 every week, every day, and then even after that. If there's
14 questions that come up, we do ask those and we find out answers
15 to those as they come.

16 Q I'm going to take you to Page 15, please, Plaintiffs' 207.

17 **MR. THAGARD:** Highlight that.

18 Q I'm going to ask you to look at this. Is this one of the
19 intermediate courses that you take?

20 A Yes, sir.

21 Q Okay. Where is this course provided?

22 A It's on the Clayton University online that we have.

23 Q All right. Have you taken this course?

24 A Yes, sir, I have.

25 Q And can you read the course description to us please,

1 ma'am?

2 A "Intermediate collector skills, building customer
3 loyalty. Loyal customers are the life blood of a
4 company. Keeping and attracting new customers allows
5 a company to thrive. Participants in this course
6 will learn the importance of customer loyalty to them
7 personally as well as to Vanderbilt Mortgage and
8 Finance. Developing the skills to effectively
9 address customer needs makes the individual more
10 valuable to the company. Regardless of job title,
11 organizational position or experience some of our
12 most important work is to attract, satisfy and
13 preserve customers; in short, to build customer
14 loyalty."

15 Q And is this consistent with the training you received for
16 the past seven years or so, nine years at Vanderbilt?

17 A Yes, sir.

18 Q All right. And is customer loyalty something that's
19 emphasized?

20 A Yes, sir, it is.

21 Q And why is that?

22 A We want customers to feel good about being with Vanderbilt
23 and also to refer Vanderbilt to their friends, to their family.
24 You know, just for them to have a good relationship with us.

25 Q Okay.

1 **MR. THAGARD:** I'm going to get you to pull up
2 Page 29, please, of the same exhibit.

3 Q And as account representative do you receive certain
4 training regarding fraud prevention?

5 A Yes, sir.

6 Q Okay. And can you tell me about that, please?

7 A The fraud prevention training procedures, Vanderbilt
8 Mortgage and Finance, Incorporated has a zero tolerance policy
9 for fraud. This is due to its uncompromised quest to be a
10 company that is renowned for its ethical business practices and
11 strives for 100 percent accuracy on all the MF loans. A
12 company-wide fraud hotline -- and it's 1-866-Need CMH -- was
13 recently established for team members to report any form of
14 fraud, misconduct or unethical behavior. This training has
15 been incorporated in the new retail sales representative
16 training CDs.

17 Q And is this consistent with the training you received as a
18 Vanderbilt account representative?

19 A Yes, sir.

20 Q Okay. Are they serious about this zero tolerance for
21 fraud?

22 A Yes, sir.

23 Q And is the hotline still there?

24 A Yes, sir, it is.

25 Q Okay.

1 **MR. THAGARD:** I'd like to bring up Page 146, please,
2 of the manual.

3 Q And if you look at the bottom there, it says --

4 **MR. THAGARD:** Can you pull up that last -- the bottom
5 date?

6 Q It shows that this is 2007. Is it your experience that
7 Vanderbilt regularly updates its training?

8 A Yes, sir.

9 Q Okay. And in 2007, had some training been added?

10 A Yes, sir. Two additional courses.

11 Q Are you regularly required -- how regularly do you all
12 have training meetings?

13 A We as account reps have a monthly account rep training to
14 go over things, refresher courses, any new policies that are
15 put in place. We have that once a month.

16 Q And do you regularly have to take courses on -- have
17 Clayton online --

18 A Yes, sir, we do.

19 Q -- University? Okay.

20 **MR. THAGARD:** And I'd like to pull up Plaintiffs' 76,
21 please.

22 Q Okay. And tell us what this document is.

23 A This is our account representatives' procedures manual.
24 It's --

25 Q Is this a document that's given to you?

1 A Yes, sir.

2 Q And are you required to study it?

3 A Yes, sir. We do look at it.

4 Q And you're required to abide by it?

5 A Yes, sir.

6 Q Okay. And when is the account representative given this
7 manual?

8 A The first day of training. That afternoon after they fill
9 our paper work, they're given the manual.

10 Q Okay.

11 **MR. THAGARD:** Would you please pull up Page 20...

12 Q See there, see the introductory page. We see a picture of
13 Paul Nichols.

14 Is Paul Nichols in the courtroom?

15 A Yes, sir.

16 Q Okay. All right.

17 **MR. THAGARD:** And if you will highlight that, please.

18 Q All right. Could you read that for us please, ma'am?

19 A Yes, sir.

20 "In either instance, Vanderbilt is charged with
21 providing excellent customer service while helping
22 our customers maintain their loans on a current
23 basis. This is done through timely telephone contact
24 and strict follow-up on promises made by customers
25 for payment. Our contact with each of our customers

1 will be held to the highest standards of moral,
2 ethical and legal conduct. The following rule of
3 thumb sets the tone for a code of ethics. I want
4 employees to ask themselves whether they are willing
5 to have any contemplated act of fear the next day on
6 the front page of their local paper to be read by
7 their spouse, children and friends with the reporting
8 done by an informed and critical reporter."

9 Q And is this something that's constantly reinforced at the
10 company?

11 A Yes, sir, it is.

12 **MR. THAGARD:** Can you please pull up Page 235?

13 Q And are you trained on what type of practices are not
14 allowed --

15 A Yes.

16 Q -- by the account representatives?

17 A Yes, sir, we are.

18 **MR. THAGARD:** And can you take that down.

19 Q And can you just give us a summary. You don't need to
20 read it, but tell us the type of things that you are trained
21 not to do.

22 A We can't call a customer before 8:00 a.m. their time or
23 after 9:00 p.m. their time. We can't send any kind of letters
24 in the mail that are saying that we're going to take, you know,
25 legal action when we're not, harass the customer in any way.

1 If they ask not to be called at their place of employment, we
2 are to honor that. In some instances they may send a letter in
3 writing not to be asked to be called at home any longer, and we
4 do honor that as well.

5 Q And do you take your job as an account representative very
6 seriously?

7 A Yes, sir.

8 Q Okay. And part of your job is to call customers, correct?

9 A Yes, sir.

10 Q Okay. And is it important for you to keep those customers
11 over time?

12 A Yes, sir.

13 Q And when you do call customers you keep records, correct?

14 A Yes, sir.

15 Q All right. And what are you trained to do when you're
16 speaking with a customer?

17 A Document the events of the call. As we're talking with
18 the customer just pretty much tell on the notes on the system
19 what's going on and what's happening on the account.

20 Q And so are all the account representatives are they taught
21 to type in everything that goes on in the call?

22 A Yes, sir.

23 Q The good, the bad, the ugly?

24 A Absolutely. Yes, sir.

25 Q Okay. And are you trained to take these notes?

1 A Yes, sir.

2 Q And are you trained after you take the notes, can they be
3 altered?

4 A No, sir.

5 Q Okay. And are you trained to take accurate notes?

6 A Yes, sir.

7 Q And the notes were made at the time of the call, correct?

8 A Yes, sir.

9 Q Okay. And the notes are kept -- and what are the purposes
10 of the notes?

11 A We are an inbound call center as well. So if a customer
12 wants to call in to discuss their account, another rep might
13 retrieve that call. And so the notes are there to help that
14 representative be able to provide any sort of service that
15 customer may need and not have to put them on hold or try to
16 find an account rep that is theirs that might not be there at
17 that point.

18 Q And can you review the notes to review the skills of your
19 people underneath you?

20 A Yes.

21 **MR. RUMLEY:** Your Honor, I at this point object to
22 leading.

23 **THE COURT:** Sustained.

24 **MR. RUMLEY:** He's been leading --

25 //

1 **BY MR. THAGARD:**

2 Q Are there any other purposes for the notes?

3 A Training purposes to make sure, you know, documentation.
4 When you're typing real time to a customer, you have to
5 abbreviate a lot so that you can make sure you get everything
6 in that you need to that's being discussed. So when we are
7 typing the conversations, we use it as training purposes to
8 kind of get everyone on the same page with the abbreviations
9 that we commonly use on the notes on the accounts.

10 Q And are you actually trained with the abbreviations so
11 they'll be consistent?

12 A It's part of the training, yes, sir.

13 **MR. THAGARD:** I'd like to pull up Plaintiffs' 76,
14 Pages 34 and 35.

15 Q Are those some of the -- just by way of example, are those
16 some of the abbreviations you are trained to make?

17 A Yes, sir.

18 Q And are you trained on how to read these abbreviations?

19 A Yes, sir.

20 Q Okay. And does your job include on a regular basis
21 reading and reviewing these abbreviations?

22 A Yes, sir.

23 Q Does Vanderbilt regularly audit the calls of the
24 collectors?

25 A Yes, sir.

1 Q And what's the purpose of that?

2 A Training purposes, again, to make sure we're complying
3 with everything that needs to be done on the account. The
4 biggest purpose for training, if someone is, you know, needing
5 help on how they're doing something, then the training is
6 helpful to them.

7 Q Okay. And do they periodically record calls?

8 A Yes, they do.

9 Q And what's the purpose of that?

10 A Training purposes, as well. I as a team leader am
11 required to evaluate. Each one of my reps gets six calls
12 recorded every month. And we sit down together every month and
13 we go over the calls, listen to them together and I help them
14 with any kind of training or techniques that they might be
15 needing to improve on.

16 Q And what is your number one goal as a Vanderbilt account
17 representative?

18 A To help the customer stay in their home, get up to date,
19 keep their payments up.

20 **MR. THAGARD:** And can we please pull up
21 Plaintiffs' 79?

22 Q Do you recognize this document?

23 A Yes, sir. It's a collector training manual.

24 Q Okay. And again, tell us the purpose of it, please.

25 A This is used in training and ongoing out of training.

1 It's a reference for our account representatives to go back to.
2 It's, basically, their training.

3 **MR. THAGARD:** Let's pull up Page 21 of this, please.
4 And highlight that for us.

5 Q And could you read that for us, please?

6 A Yes, sir.

7 "Vanderbilt's collection team is committed to their
8 mission to service all loans in a manner that
9 maximizes profitability and return on investment for
10 our stockholders. Our mission implies that we come
11 to work every day for the benefit of our customers,
12 our team members and our shareholders. As a
13 collector for Vanderbilt Mortgage remember the
14 following: We want all of our customers to keep
15 their homes. We want to assure company profitability
16 by minimizing delinquencies and repossessions."

17 Q Okay. And is that consistent with the training you've
18 received for the past nine years at Vanderbilt?

19 A Yes, sir.

20 Q Is it consistent with your number one goal?

21 A Yes, sir.

22 Q Okay.

23 **MR. THAGARD:** Can we pull up -- let's go to
24 Plaintiffs' 76, please, Page 1...

25 Q Do you recognize that document?

1 A Yes, sir. That's the account representatives' procedures
2 manual.

3 **MR. THAGARD:** And can you please pull up Page 250?
4 And if you could highlight the first part right there. Yeah,
5 okay.

6 Q And can you read that for us, please?

7 A Yes, sir.

8 "Repossession provision strategies, understanding how
9 to control the cost of repossessions and
10 foreclosures. VMF suffers substantial financial
11 losses each year due to repossessions and
12 foreclosures. It is every team member's
13 responsibility to help control these costs. AR
14 should learn how to identify potential problem loans
15 and encourage resolution to the customer's issues
16 before they reach the point of no return."

17 **MR. THAGARD:** Can we pull up that?

18 Q And will you read the sentence beginning "for every home"?

19 A Yes, sir.

20 "For every home that is repossessed another three to
21 five new homes must be sold or approximately 60
22 payments must be collected from other loans to
23 compensate for the loss and revenue. Recent
24 statistics reflect an average loss of \$32,810 for
25 each home that is repossessed and a recovery average

1 of \$11,811.60 per home. This means we have an
2 average loss of \$20,998.40 per repossession."

3 Q And can you read that, (indicating)? Can you read the
4 last sentence under customer relations, please?

5 A Yes, sir.

6 "Explain to the customer the importance of
7 establishing a good pay history and coach them how to
8 prioritize their debts. Show them that you are
9 trying to help them solve their problems. If you
10 establish the fact that the customer can no longer
11 afford the home, it is your job to intervene and find
12 the best possible way to save the home from
13 repossessing."

14 Q Okay. So is it in Vanderbilt's financial interest to
15 repossess a home?

16 A No, sir.

17 Q And is this why they highlight the importance of avoiding
18 repossessions?

19 A Yes, sir.

20 Q Okay.

21 **MR. THAGARD:** And can you pull up Page 259, please?

22 Q Can you explain to us what the "Homeowner's Assistance
23 Program" is, please?

24 A Yes, sir. We call it HAP for short at Vanderbilt. It's a
25 program that we've put into place where instead of giving them

1 an extension, that means we would put that payment to the end
2 of their loan. Vanderbilt would basically pay part of the
3 customer's delinquent payment. So if they came up with half or
4 at least half of their past due payment, then Vanderbilt would
5 pay the remaining portion to bring their loan up to date or
6 current.

7 Q Okay. And whose money is Vanderbilt using to pay those
8 monthly payments with?

9 MR. RUMLEY: Objection. Leading.

10 THE COURT: Sustained.

11 BY MR. THAGARD:

12 Q Can you explain how if a customer doesn't make those
13 payments, who is making them?

14 A Vanderbilt takes money and they apply it to the customer's
15 loan.

16 Q And why? What have they done?

17 A We want to give the opportunity for the customer to get
18 back up to date and to help keep their home.

19 Q And can you read --

20 MR. THAGARD: Highlight that last piece, please.

21 Q And who does this program apply to?

22 A This program is only for customers that are in the home,
23 can afford to pay and will maintain contact with us. It is
24 important to keep in mind that Vanderbilt is actually paying
25 part of the customer's loan payment in this situation, so this

1 can be a relatively expensive solution for the company and,
2 thus, should be used with discretion.

3 Q Okay. Now, for a period of time you were assigned to the
4 Flores-King account, correct?

5 A Yes, sir.

6 Q Okay. And do you specifically remember speaking to
7 Mr. Flores and/or Mr. King?

8 A Mr. King more. I spoke with Mr. Flores maybe once or
9 twice.

10 Q Okay. And how many accounts do you -- do you work a lot
11 of accounts in a given year?

12 A Yes, sir, I do. A bucket usually consists of 800 to 1,000
13 accounts.

14 Q Okay. But you remember Mr. Flores and King?

15 A Yes, sir.

16 Q Can you explain to us why, what it is that makes you
17 remember them specifically?

18 A I feel like I had a really good relationship with
19 Mr. Flores and Mr. King. They would call in, or Mr. King
20 would, to talk about his payment on the house, make alternate
21 arrangements with me because he was late for whatever reason.

22 But moreover, we have to limit our calls to just a
23 few minutes because we have so many to do. However, Mr. King
24 would talk with me a lot. And I enjoyed that with -- about he
25 had a rabbit farm; they had prize rabbits that they raised and

1 sold, you know, to kind of help with their expenses; you know,
2 just giving me updates on his new job at the funeral home or,
3 you know, how Mr. Flores' hair salon was doing. It was more of
4 a let's make alternate arrangements, and then we kind of caught
5 up on, you know, maybe things that were going on with them.

6 Q Did they sometimes call up and ask to speak with you
7 specifically?

8 A Yes, sir.

9 Q Okay. And did there ever come a time when you had to give
10 up their account?

11 A Yes, sir, I did.

12 Q And did they still call and ask to speak with you
13 specifically?

14 A Yes, sir.

15 Q On a scale of one to ten, what sort of -- ten being good,
16 one being bad -- what sort of relationship would you say that
17 you had with Mr. King and Mr. Flores?

18 A I feel like it was very good, a eight or a nine.

19 Q Okay. Were they polite?

20 A Yes, sir.

21 Q Okay. And do you have any sort of specific memories that
22 you remember about them?

23 A They had a unfortunate incident where they had a truck
24 veer off the road and hit their house, and so I kind of helped,
25 you know, work through that with them letting them know who to

1 contact. And Mr. King had stated that they may be behind on
2 their payment for that reason. And we worked out other
3 arrangements because of that.

4 Q Okay.

5 **MR. THAGARD:** Your Honor, the -- let's pull up
6 page --

7 Q Oh, let me tell you. Are you personally familiar with --
8 I'll tell you what do. Let's switch to -- I'm going to take
9 you, pull up...

10 Did you have an opportunity to review the notes of
11 the calls that you personally had with Mr. King and Mr. Flores?

12 A Yes, sir.

13 Q Okay. And I'm going to pull up Kim Russell Exhibit 21.

14 **MR. RUMLEY:** Your Honor, I'm going to object. I
15 think this was an issue we took up.

16 **MR. THAGARD:** Your Honor, may we approach?

17 **THE COURT:** Yes.

18 **(Bench conference on the record begins at 5:16:05 p.m.)**

19 **MR. THAGARD:** I'm going to show her a call note that
20 she was personally involved in which is -- and have her testify
21 as to what the conversation is.

22 **THE COURT:** Why can't you just use -- ask her what
23 they talked about?

24 **MR. THAGARD:** I can but I just would like to
25 corroborate that.

1 **THE COURT:** It's not admitted is it?

2 **MR. THAGARD:** Your Honor --

3 **THE COURT:** Is that admitted?

4 **MR. THAGARD:** No, your Honor, it's not. And he
5 wasn't going to show it. I'm sorry, I thought you said we
6 could admit stuff that she did personally --

7 **THE COURT:** No --

8 **MR. THAGARD:** -- as opposed to --

9 **THE COURT:** I said she could testify about that.

10 **MR. THAGARD:** Okay. All right. I'm sorry.

11 **(Bench conference ends at 5:16:36 p.m.)**

12 **THE COURT:** Thank you. Proceed.

13 **(Pause)**

14 **BY MR. THAGARD:**

15 Q Was there a time in -- one thing, you haven't been privy
16 to this testimony, but there's a dispute in the case with
17 regard to whether or not Mr. Flores and Mr. King knew whether
18 that Lots 35 and 36 had been pledged in support of the retail
19 installment contract.

20 **MR. THAGARD:** And please pull up Plaintiffs'

21 Exhibit 1.

22 Q And do you regularly refer to and use retail installment
23 contracts as part of your job as an account representative?

24 A Yes, sir.

25 Q Okay. And beginning here, the second page, the second --

1 can you read that second sentence for me, please?

2 A Yes, sir.

3 "The seller will submit this contract to Vanderbilt
4 Mortgage and Finance, Incorporated, P.O. Box 9800,
5 Maryville, Tennessee 37802; and if approved, the
6 contract will be assigned to Vanderbilt Mortgage and
7 Finance, Incorporated by or promises to advise seller
8 in writing of any change of buyer's mailing address
9 while this contract is in effect."

10 **MR. THAGARD:** And would you get that down?

11 Q And did Mr. Flores and Mr. King make their payments to
12 Vanderbilt?

13 A Yes, sir.

14 Q And that's what you were talking with them about, correct?

15 A Yes, sir.

16 Q Okay.

17 **MR. THAGARD:** And if you highlight the bottom there.

18 Q Do you know how many payments they were supposed to make?

19 A 144 payments.

20 Q Okay. And how many payments did they make?

21 A Just by review of the notes, 84 payments, I think.

22 Q Okay. And how many of those were late?

23 A Approximately 40 to 50 payments were late.

24 Q Okay. And how many were over 30 days late?

25 A I want to say 48 if I recall correctly.

1 Q Okay. And here can you -- the retail installment contract
2 indicates that the buyer gives the seller a security interest
3 in real property located at 3536 Gallimore, Alice, Texas.

4 **(Mr. Thagard confers off the record)**

5 Did there come a time --

6 **(Mr. Thagard confers off the record)**

7 Did there come a time when you had an opportunity to
8 have a conversation with Mr. Flores or Mr. King about Lots 35
9 and 36?

10 A Yes, sir.

11 Q Okay. And tell me what you remember about that
12 conversation.

13 A From reviewing my notes, I recall back in July of, I think
14 it was 2003, Mr. King called in and he had questions about
15 releasing one of the lots from the loan, something about having
16 to change it to someone else's name and needed the release done
17 and wanted to know what he needed to do to have that happen.

18 Q Okay. And let's take that back and go piece by piece.

19 Who called in?

20 A Mr. King.

21 Q Okay. And when did he call in?

22 A I think it was July of 2003, the middle of the month.

23 Q And what did he want to speak to somebody about?

24 A He had asked initially about refinancing the loan because
25 he was questioning on getting one of the lots that they had up

1 for collateral on the deed released because they needed to do a
2 transfer to another party's name.

3 Q Did he indicate specifically that he had put Lots 35
4 and 36 on the loan?

5 A Yes, sir.

6 Q Okay. And what was he asking for Vanderbilt to do?

7 A Release one of the lots. He wanted me to find out what it
8 would take to do that.

9 Q And do you remember which lot that was?

10 A I don't exactly know. I think it was 35, but I'm not for
11 sure.

12 Q Okay. And what did you say to him?

13 A I advised him that I would have to check on it, it wasn't
14 my decision to make on what needed to be done, and that I would
15 get with my manager and get back with him when I had an answer
16 for him.

17 Q Okay. And what happened next?

18 A I proceeded to check with -- I had a credit manager at
19 that point. I proceeded to let her know what he was interested
20 in doing. She at that point went to her manager to find out
21 what needed to be done to get that accomplished.

22 Q Okay. And what did she find out needed to be done?

23 A The information that she relayed to me was that we would
24 release one of the lots for \$10,000.

25 Q Okay. And did you have an opportunity to call and speak

1 with Mr. King about that?

2 A Yes, sir. She advised me to relay that information to the
3 customer, at which point I did call and leave a message for
4 Mr. King. He then proceeded to return the call to me
5 eventually. We kind of played phone tag for a while. And at
6 that point I did advise him that for the 10,000 they would
7 release one of the lots for him.

8 Q And this was in July, in July of 2003?

9 A Yes, sir.

10 Q Okay. And did he tell you why he wanted to get Lot 35 off
11 of the loan?

12 A Initially, I think that he had stated that it was in
13 Cesar's name and they needed to get it out of their name into
14 someone else's name. I don't know all the particulars. It was
15 long ago.

16 Q And did -- you may have covered this. Did they agree -- I
17 mean did they agree to pay the \$10,000?

18 A Mr. King at that point proceeded to say he didn't have the
19 money, that kind of money at that point and just leave it as is
20 for right now.

21 Q Okay. Is there any question in your mind that Mr. King
22 knew that Lots 35 and 36 had been pledged as collateral for the
23 debt in this case?

24 A There's no question that he did know.

25 (Pause)

1 Q Now, a minute ago we looked at assignment language in the
2 retail installment contract.

3 Are you also familiar with documentation that is
4 provided to the customer at the time of the sale with regard to
5 whether or not who they should send their payments to?

6 A Yes, sir. A welcome letter is sent out.

7 **MR. THAGARD:** Can you pull up Plaintiffs' 154,
8 Page 8, please?

9 Q And is this what's called a welcome letter?

10 A Yes, sir.

11 Q Okay. And when is this provided to the customer, to your
12 knowledge?

13 A Vanderbilt mails that. They usually mail it right when
14 the deal comes through to Vanderbilt and before their --
15 obviously, before their first payment is due so they'll know
16 where to send it.

17 Q Okay. And when was Mr. Flores and Mr. King's first
18 payment due?

19 A March the 1st of 2002.

20 **MR. THAGARD:** Can you go back to the bottom of that
21 document here...

22 **(Mr. Thagard confers off the record)**

23 Q Are you also familiar with whether or not Mr. Flores and
24 Mr. King were sent monthly statements in 2008 and 2009?

25 A Yes, sir. We changed to monthly statements from coupon

1 booklets approximately then.

2 Q Okay.

3 **MR. THAGARD:** I'd like to show Plaintiffs' 19,
4 please, an example of the statements we sent them. Can you
5 highlight that?

6 Q And does that indicate that the statement -- who does that
7 indicate the statement is from?

8 A Vanderbilt Mortgage and Finance, Incorporated.

9 Q And who does that indicate the amount money is due to?

10 A Vanderbilt Mortgage and Finance, Incorporated.

11 Q And in all the years that you worked with Mr. Flores and
12 Mr. King and all the times that you spoke with them, did they
13 ever one time express a concern that they were making payments
14 to Vanderbilt?

15 A No, sir.

16 Q In your opinion, were Mr. Flores and Mr. King aware that
17 this debt had been assigned to Vanderbilt?

18 A Yes, sir.

19 **MR. THAGARD:** Your Honor, I'm going to show the
20 witness an exhibit which has not been admitted yet.

21 **THE COURT:** Go ahead.

22 **MR. THAGARD:** Can you pull up Plaintiffs' 17, please?

23 **BY MR. THAGARD:**

24 Q Now, Ms. Russell, do you recognize this document?

25 A Yes, sir. It's a payment history.

1 Q Okay. And is it essentially a printout of some computer
2 data?

3 A Yes, sir.

4 Q Okay. And is this data compiled in the regular course of
5 Vanderbilt's business?

6 A Yes, sir.

7 Q Is the data compiled as the payments are made and
8 recorded?

9 A Yes, sir.

10 Q Okay. Is the data immediately updated each and every time
11 a payment is made?

12 A Yes, sir.

13 Q Okay. Is the data maintained in the regular course of
14 Vanderbilt's business?

15 A Yes, sir.

16 Q Does Vanderbilt use this data to keep a history of
17 payments with its customers?

18 A Yes, sir.

19 Q Do you and your people use this and rely on this data on a
20 regular basis as a part of your duties as an account
21 representative?

22 **MR. THAGARD:** Your Honor, we'd like to offer the
23 payment history into evidence as a business record under
24 Federal Rule of Evidence 803(6), please.

25 **MR. RUMLEY:** No objections from Flores and King.

1 **THE COURT:** And that number is?

2 **MR. UNIDENTIFIED:** No objection.

3 **MR. THAGARD:** It is 17.

4 **THE COURT:** Plaintiffs' 17 is admitted.

5 **(Plaintiffs' Exhibit Number 17 was received in evidence)**

6 **BY MR. THAGARD:**

7 Q Is there a -- I believe you testified that of 84 payments
8 Mr. Flores and Mr. King were late on 82 of them?

9 A Yes, sir. I think, approximately.

10 Q And how many times were they over 48 days late?

11 A 48 to 50.

12 Q Okay. And how many days late does somebody have to be
13 before Vanderbilt can begin repossession proceedings?

14 A Thirty days past due.

15 Q So how many times could Vanderbilt have begun repossession
16 proceedings against Mr. Flores and Mr. King?

17 A If we wanted to, the 48 times they were over 30 days late.

18 Q Why didn't you do so?

19 A That's not our position to do. We don't want to repossess
20 homes. We want to keep them in their house, so our alternative
21 is to give other options.

22 Q Okay. Were Mr. Flores and Mr. King sometimes difficult to
23 get a hold of?

24 A Yes, sir.

25 Q Did they regularly return their messages?

1 A No, sir.

2 Q Okay. What if somebody is late on a payment 48 times over
3 30 days? What does an account representative do?

4 A I mean at that point we're trying to just contact the
5 customer at any of the numbers that they provide to us, make
6 contact to find out what's happened and try to make alternate
7 arrangements with them.

8 Q And explain to the jury what an "alternate arrangement"
9 is.

10 A If they can't make their payment on the date that they
11 sign the contract for, such as the 1st or the 15th, an
12 alternate arrangement would be talking with them to find out
13 what's happened and then to make an arrangement that's fitting
14 for them and also for Vanderbilt to get their payment in later
15 than they, you know, signed the contract for.

16 Q Okay. And did Mr. Flores and King enter into a lot of
17 alternate arrangements with Vanderbilt?

18 A Yes, sir.

19 Q And you personally?

20 A Yes, sir.

21 Q Okay. And did they break a lot of those alternate
22 arrangements?

23 A Yes, sir.

24 Q Was that a regular routine of theirs?

25 A Yes, sir.

1 Q Okay. And when they did that, they would get a broken
2 promise letter, correct?

3 MR. B. GUTIERREZ: Objection. Leading.

4 THE COURT: I'm sorry?

5 MR. THAGARD: What would happen?

6 MR. B. GUTIERREZ: Objection. Leading.

7 MR. RUMLEY: Objection. Leading.

8 MR. THAGARD: I'll withdraw it, your Honor.

9 THE COURT: Okay.

10 BY MR. THAGARD:

11 Q What would happen when they would break an alternative
12 arrangement?

13 A We would try to contact them by telephone to find out what
14 happened; something could have come up. We do have an option
15 to send a letter stating that they did not keep their promise
16 with us. It's computer generated. And we can send that to
17 them as well to find out what happened if we're unable to get
18 them by the telephone.

19 Q Okay. And so there were 47 times in which you could have
20 started repossession proceedings but didn't, correct?

21 A I think it was 48. Yes, sir.

22 Q Forty-eight. Okay. And did there finally come a time in
23 which Vanderbilt found it had to repossess the home?

24 A Yes, sir.

25 Q Okay. And can you talk to us about the events leading up

1 to that?

2 A From my review of the notes, there was a point that
3 Mr. King called in and he had left the home. He said he had
4 moved out he was going to help Mr. Flores with one other
5 payment but he would not be helping after that. We didn't
6 receive the payment from him. We could not reach Mr. Flores.
7 We tried to reach him through family members or neighbors or
8 friends, unable to do so. So we at that point decided that we
9 had to send the notice of default.

10 Q Okay. And when somebody tells you they're moving out of
11 the home, is that a problem?

12 A It is because we consider that they're abandoning their
13 interest in that property.

14 Q Okay.

15 **MR. THAGARD:** And please pull up Plaintiffs' 1 and
16 then go to Page 3, please.

17 Q This is the retail installment contract, Page 3. Can you
18 read that highlighted language for us please, ma'am?

19 A Yes, sir.

20 "Under no circumstances is buyer entitled to a notice
21 of default if buyer has either abandoned or
22 voluntarily surrendered the manufactured home."

23 Q To your knowledge did Mr. King provide a forwarding
24 address?

25 A No, sir.

1 Q Do you know from your -- can we go back to...

2 At the time of the default how many days' late --
3 notice of the default, how many days' late were Mr. Flores and
4 Mr. King?

5 A Remembering back to looking at the actual notice, they
6 were due for March payment, March the 1st.

7 Q Okay.

8 A And the letter was sent in May, on May the 5th I think is
9 when we ordered that letter.

10 Q And were you all regularly calling Mr. Flores and King?

11 A Yes, sir.

12 Q Why were you -- were you calling them like very
13 frequently?

14 A Well, at that point we were trying to make contact before
15 we had to actually send the notice to find out, you know, what
16 was going on, if they wanted to try to keep the home, bring it
17 back up to date or if we could perhaps help them sell it if
18 they weren't able to make the payments on it.

19 Q And so what were you trying to get in touch with them for?

20 A To see what happened and to try to help them keep that
21 house if that's what they wanted to do.

22 Q Okay. Now, at this point Mr. Flores and Mr. King had been
23 living in the home for over seven years, correct?

24 A Yes, sir.

25 Q Okay. And did there come a time in which you had to send

1 the default?

2 A Yes, sir.

3 Q Okay. And do your records indicate that a default was
4 actually ordered?

5 A Yes, sir.

6 Q Okay. And while you didn't have to send Mr. King a
7 notice, did you make every effort to?

8 A Yes, sir. We tried to skip trace to find his address so
9 that we could give him notification on what was going on and
10 that we were sending that default out.

11 Q And when an account representative decides it's finally
12 time to default, can they make that decision on their own?

13 A An account rep cannot make that decision. They can
14 request the letter. Senior account representatives, their
15 supervisor, makes the decision if it's best at that point to go
16 forward.

17 Q And did your review of the file indicate that approval had
18 been obtained?

19 A Yes, sir.

20 Q By a senior supervisor?

21 A Yes, sir.

22 **MR. THAGARD:** And I'd like to pull up
23 Plaintiffs' 146, please.

24 **THE COURT:** Are you close to finishing, Counsel?

25 **MR. THAGARD:** Your Honor, I need to go through this

1 notice, which I could do tomorrow. It's sort of laborious.
2 I've got to, you know --

3 **THE COURT:** It's 5:35 and I think it's time, maybe,
4 that we break for the evening. So we'll start back promptly at
5 8:30 in the morning. Please get here a little bit earlier than
6 that.

7 Would you please stand for the jury?

8 **(Jurors exit courtroom at 5:34 p.m.)**

9 Thank you. You may be seated. And you may step
10 down.

11 **(Witness steps down)**

12 Anything to take up outside the presence of the jury?

13 **MR. RANGEL:** No, your Honor.

14 **MR. UNIDENTIFIED:** No, your Honor.

15 **(Pause)**

16 **MR. RUMLEY:** May we be excused?

17 **THE COURT:** Yes. You're excused. Come back about
18 8:20 in the morning, please.

19 **MR. RUMLEY:** Thank you.

20 **(This proceeding was adjourned at 5:35 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

February 8, 2011

TONI HUDSON, TRANSCRIBER